United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

United States Court of Appeals
For the
District of Columbia Circuit

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

PATRICIA E. FAHEY, Appellant,	)	
v.	)	NO. 13,625
ROBERT E. MATTHE, et al., Appellees.	)	

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APPELLANT'S BRIEF, AND THE

JOINT APPENDIX

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THE STATUTE INVOLVED,
AND THE ORDER OF THE COMMISSIONERS OF
DISTRICT OF COLUMBIA

The Statute involved, Title 5, District of Columbia Code, Sections 616, and subsequent pertinent sections; and the Order of the Commissioners enacted under the provisions of said statute, are set out in the Appendix A, attached hereto.

II

JURISDICTION

This is an appeal from an order of the United States District Court for the District of Columbia, entered on September 21, 1956, granting summary judgment in favor of the Appellees and dismissing the Appellant's complaint. This Court has jurisdiction under 28.U.S.C.1291.

I

STATEMENT OF QUESTION PRESENTED

1. Is the language of Title 5, Section 616 of the D. C. Code purporting to authorize the Commissioners of the District of Columbia "to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity," so general and indefinite as to violate the requirements of due process?

I

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III

STATEMENT OF THE CASE

The Appellant, Patricia E. Fahey, is a creditor of the estate of Cornelia Suikerbuik, deceased, who died intestate, leaving as her estate premises 1441 Girard Street, Northeast, in the District of Columbia, consisting of a stone and frame dwelling house and the land upon which it stands.[1] There is no personal property in the estate. Prior to the death of Cornelia Suikerbuik the Board for the Condemnation of Insanitary Buildings had condemned the above-described dwelling under the supposed authority of Title 5, Section 616, and the several sections following it, of the District of Columbia Code.[2]

In July, 1956, the said Appellees, as members of the said Board, were proceeding to the immediate destruction of the residence above-described; and on July 13, 1956, Appellant filed this suit to enjoin them upon the ground that they had no lawful authority for their action. Appellees filed their joint answer and a motion for judgment upon the record, or, in the alternative, for dismissal of Appellant's complaint. The lower Court thereupon dismissed the complaint and awarded judgment for the Appellees, and denied Appellant leave to amend. From this adjudication appeal to this Court noted on October 22, 1956.

1/ Lot 18, Square 4020, as shown by the Land Records of the District of Columbia.

2/ Appellant's Brief, Appendix A, p. 1.

IV

STATEMENT OF POINTS IN ARGUMENT

1. The Appellant is a real party in interest, and as such is entitled to maintain this suit, the object of which is to prevent the unconstitutional acts of the Appellees, as members of the Board for the Condemnation of Insanitary Buildings, which threaten irreparable damage to real estate in which she has a legal and equitable interest.

2. The statute (Title 5, Sections 616, et seq), under which Appellees claim authority, is unconstitutional. Said statute is a penal statute, and is so indefinite and vague that it violates the requirements of due process of law, both as to its penal provisions and as a taking of property without due process.

3. The action of the District Court of the United States for the District of Columbia in summarily dismissing Appellant's complaint, and giving judgment in favor of the Appellees, was reversible error.

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3. The action of the District Court of the United States for the District of Columbia in summarily dismissing Appellant's complaint, and giving judgment in favor of the Appellees, was reversible error.

ARGUMENT

1

APPELLANT IS REAL PARTY IN INTEREST

The status of the appellant is that of a creditor of the Estate of Cornelia Suikerbuik, deceased. Since there is no personal property in that estate, she is entitled to payment out of the real estate; and has a lien upon such real estate to protect her interest therein. Whoever takes legal title takes subject to such claim, and is trustee for the Appellant's benefit.

The jurisdiction of the District Court, and the status of the Appellant as a real party in interest has long been recognized. In PLUMB v. BATEMAN, 2 Appeals, D.C. 157, at page 166, this Court said:

> "It is true, as a general rule, that in this jurisdiction a creditors' bill filed for the purpose of subjecting the real estate of a deceased person's assets to the payment of his debts, the executor or administrator is a necessary party." (Citing authorities.) "And such has been the settled practice during the whole century of its existence as a separate jurisdiction. Bank of U.S. v. Ritchie, 8 Pet. 128. The reason is because the personal estate of a decedent is the fund to which recourse must primarily be had for the payment of his debts, and the real estate can only be resorted to for that purpose when the personal assets are insufficient.....

> "But while this is the general rule, it is subject to the qualification that if there are no personal assets, and consequently no qualified executor or administrator - for without assets there can not be an administration, and without some preliminary showing of personal assets no administrator can be appointed or letters testamentary granted - in that event a creditors' bill may be maintained without the presence of an executor or administrator.

The present suit is filed by a creditor of a decedent, to protect and preserve the real estate of said deceased, such real estate being the only asset of the estate; the right of Appellant as a lien holder is well-established:

> "It is argued that creditors of a decedent have no lien against the real estate until the filing of the bill; that suits that create a lien are not suits to enforce a lien; and that, therefore, creditors' bills are not within the meaning of the statute. * * * But even if the creditors' bills were not within the purview of the last clause of the statute; and were not actions in equity to enforce a lawful claim against real estate, this argument would lead to an illiberal and unreasonable construction of the law. While it is true that there is no express lien in favor of creditors against real estate of a decedent until the filing of the bill for the purpose, the law charges the realty as well as the personalty, with a trust for the payment of debts; and the heir or devisee takes the realty subject to that trust. It is to enforce that trust, which may be regarded as a general or tacit lien upon the realty, that the creditor files his bill, and thereby acquires a specific lien. Miller v. Sherry, 2 Wall. 237." PLUMB v. BATEMAN, Supra, p. 171.

TITLE 5, SECTION 616, ET SEQUENTIA, IS A PENAL STATUTE AND IS SO INDEFINITE AND VAGUE IN ITS TERMS THAT IT VIOLATES THE REQUIREMENT OF DUE PROCESS OF LAW.

1. THE STATUTE IS PENAL IN CHARACTER.

The sections of Title 5 of the D. C. Code under examination here, undoubtedly intended to mark an advance in legislation in the interest of sanitation, public health and "the general welfare", evidences a strange lack of concern for the Constitution of the United States, although the duty to "preserve, protect and defend" that Constitution is the sworn duty of every Official of Government; and adherence to that duty is undoubtedly the first and most imperative step toward advancing the general welfare.

An analysis of the law shows:

1. The Commissioners of the District may delegate their duties under the act to "officer, agents, employees, contractors, employees of contractors, and other persons as may be designated, detailed, employed, or appointed by said Commissioners... (Title 5, Sec. 616.)

2. The Commissioners "or their designated agent or agents" (as above described,) (Title 5, Sec. 616, p. 1, Supplement, Appellant's Brief) "are authorized to investigate", through inquiry and inspection, all buildings in the District of Columbua, "and all persons acting under their authority and the authority contained in this Act, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said

District for the purpose of inspecting the same" except buildings under the exclusive jurisdiction of the United States. The purpose of this inspection, if it be to carry out the purpose of Act is to obtain evidence which may and often does, furnish a basis for setting into motion the penal provisions of the Act. The visitation and inspection, so called, is in truth a search for evidence which may be used for purposes of criminal prosecution, and as well for the condemnation and forfeiture of the building inspected, as a penalty for failing to meet the requirements of the law. There is no provision for a sworn complaint, nor is a search warrant required; there is simply the bland assumption that the good intendment of the Act justifies the search for evidence.1/

Section 622, pp. 4-5, Supp. A, Appellant's Brief, provides that if, as a result of the search for evidence, the Board for the Condemnation of Insanitary Buildings decides that a building is in "such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity", the building is to be condemned. If after condemnation, and only then the owner of the building fails to make the changes required by such Board, or, in the alternative, fails to demolish the building within a time fixed by the Board, "he shall be deemed guilty of a misdemeanor," and punished under Section 631 of the Act. (Pp. 5 & 6, App. A, Appellant's Brief.) And, if the Commissioners of the District of Columbia (or their agents, etc., to whom they may have delegated their duties,

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1/ The Harrison Narcotics Act has a higher and more laudable intendment than this local statute; but a search warrant is required to search for evidence of violations thereunder.

including contractors, or the employees of contractors, under Section 616,) desire to do so, they may put the condemned building in the condition required by the Board of Condemnation, or they may demolish it, if they choose, and the cost of the one or the other, including the cost of making good any damages to adjoining premises, is to be assessed as a tax against the premises.

Tenants and occupants of a building may be charged with a misdemeanor if any sanitary condition which has led to the condemnation of a building or part of a building has been caused by their action or neglect. (Title 5, Sec. 630, p. 5, Aupplement A, Appellant's Brief.)

And while the offense of violating any order of the Board for the Condemnation of Insanitary Buildings, or of any of the provisions of Sections 618, 619, 620, 626, 627, or 630 of the Act, is only a misdemeanor, it carries punishment of a fine up to $100.00, or imprisonment for not more than 90 days. Any person "aiding or abetting" a violation is also deemed guilty of a misdemeanor, and is to receive the same punishment. And "Each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense." (Title 5, Sec. 631, pp. 5 & 6, Supplement A, Appellant's Brief.)

Further, as will appear more fully below, the Board for the Condemnation of Insanitary Buildings consists of three members, any two members may act for the Board, since they constitute a quorum as well as a majority, and the majority rules the Board in every decision or action. The result of this is that we have an administrative body, two members of

which may determine to condemn a building and order its demolition, which automatically brings the penal provisions of the Act to bear; while the other member may disagree violently with this decision, urging all of the reasons approved by modern science, architecture, engineering, and common sense: yet the owner is made a criminal "by majority vote." In other words, by what is at best the educated guess of two out of three men, a home owner finds that his home is condemned and he becomes a criminal unless he follows out the orders of the Board. And what is test of his guilt? It is not that he has violated any specific and clearly understandable prohibitions set out in an Act of Congress. It is that he has refused to comply with the order of an administrative Board, which order is based, first upon an educated guess as to which one member of the Board may disagree. This is clear for there is no conduct denounced by the Act as a crime except conduct which follows in point of time the condemnation by the Board, and consists of failure to comply with an Order of the Board based on such condemnation.

The lack of definiteness in the Act is further illustrated by reference to Sec. 618, (pp. 2 & 3, Appendix A, Appellant's Brief,). The first sentence of that section provides:

> "Whenever the Board of Condemnation of Insanitary Buildings shall find that any building or part of building is in such sanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity," the owner shall be served with a notice giving him not less than ten days, exclusive of Sundays and legal holidays, to show cause why the building should not be condemned; "unless the Board shall find that the insanitary condition of such building...

> is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which case a lesser time may be specified..."

And later in the same section is the provision that if the owner of the building, within the time given him by the Board to show cause, fails to show cause sufficient in the opinion of the Board to prevent the condemnation, the Board shall issue an order condemning such building and ordering the owner to put it in sanitary condition (i.e., make the changes ordered by the Board), or to demolish and remove it. The Board must then give the owner a reasonable time within which to put the building in sanitary condition, "but such time shall be not less than six months after the date of service" of said order on said owner, unless the Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which event the Board may fix a lesser time. These provisions together establish that there are two kinds of insanitary conditions which the Board is authorized to condemn: The first embraces those conditions where there is no present danger to health or life; but the danger lies in the future. The second embraces condition of present and immediate danger. It is respectfully submitted that these conditions confer upon the Board the the duty of condemning a building in a condition which is "immediately" dangerous to health or life (in praesenti) and also to condemn one which is not dangerous in praesenti, but may become dangerous in futuro, and thus give the Board power to condemn a building which is not dangerous to health at all. Such a building would be one where the Board can not

say that the building under inspection is here and now dangerous to health; but also allows it to speculate that at some time in the future the building may become dangerous; and condemn it on that ground. Since the Act must be read as a whole, Section 616 must be read in the light of Section 618. In that light the words which are the heart of the law, (i.e., "those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity.") although they refer to the dangerous condition in the present tense, and seem to mean a dangerous condition then and there apparent to the Board, in truth mean something quite different. If Section 618 means anything at all, it means that the Board of Condemnation should construe its powers to have two distinct fields of operation: The first includes those buildings the sanitary condition of which is such that it constitutes an immediate danger to health and life; and the second includes those which, although not an immediate danger, may at some future time become dangerous. The first class must be treated summarily -- allowed less than ten days to answer the notice to show cause, and only such time as the Board may fix, but less than six months, in which to put the building in the "sanitary condition" specified by the Board. The second class gets the full ten days' notice, and after condemnation, gets not less than six months to put the building in the sanitary condition required by the Board, with further extensions of time upon application. Apparently the Act is intended to give to the Board for the Condemnation of Insanitary Buildings the power to condemn a building which at the time it is inspected by the Board is not in such a sanitary condition as to endanger the

health or lives of the occupants thereof or of persons living in the vicinity. If so, does the Act fulfill the requirements of due process; does it define the offense for which it prescribes the panalty so that the owner of a building will know, not guess, what his rights and duties are? Does it prescribe a guide for those upon whom it imposes the duty of obedience? What guide does it give to the person whose building is about to be condemned only because the Board has forecasted the future and determined that at some future date his building is going to be dangerous to the health or life of the occupants, etc? It is apparent that the Act does not fulfill the requirements of due process for the reason that there is an inherent defect in it in that the owner of a building has no way of knowing from the law itself what duty he must do to prevent a condemnation based on the future sanitary condition of his building. He may not even own the building at all when that time comes, if it ever does. This situation violates the primary rule of due process, leaving an area which is vague, indefinite, and in which no property owner is safe who attempts to apply it to his property.

2. THE STATUTE IS VAGUE AND INDEFINITE.

The law is vague and indefinite in another respect as well. The provision which is the heart of the matter is the one which gives the Commissioners and the Board authority "to xxx examine xxx and to condemn" all buildings ... which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity..."

What is the test proposed by this law? It is plainly set out. The first test is whether or not the health or lives of the occupants is endangered; the second test is whether the health or lives of persons living in the vicinity are endangered. On its face it is a ridiculous test, but the law is clear, there is no obscurity here; so to fulfill its duty the Board must make inquiry and take medical advice as to the condition of the health of the occupants, and of the persons living in the vicinity. If none of those persons are suffering from any illness, mild or mortal, which could be traced to the condition of the building, the building could not be condemned. The law plainly contemplates that some of these persons must be in a condition of dangerous illness as a result of the condition of the building. Such a provision, again, is so vague and indefinite as to violate the requirements of due process.

The words "insanitary condition" when directed to an architectural entity, are so vague as to be almost without any definite meaning whatever. "Insanitary," means, according to the Standard Dictionary: "Not sanitary, prejudicial to health, likely to cause disease." The Century Dictionary and Cyclopedia defines the word as meaning, "Not sanitary, not salubrious, violating sanitary rules or requirements." There is nothing in the words as used in the statute to specify to the owner or to the Board what sanitary rules or requirements must have been violated, what degree of prejudice to health must obtain, what architectural or construction features must exist, or in what manner he has violated the law. He must look to the Commissioners or the Board for an interpretation of the meaning of the words. Such a law denies due process by failing to

define or set out definitely either by the use of technical terms, the use of terms defined by decisions of the courts, or by the use of terms which have a meaning which is so common as to be generally well known.

Since the effect of the Sections of the D. C. Code as enacted by Congress is to delegate to the Commissioners of the District of Columbia and to the Board the legislative function of determining the meaning of the words, "buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity..." the statute is void as denying due process of law to owners of land improved by buildings within the District of Columbia, as well as to others having legal or equitable interests in such land which interests are affected by the administration of said sections.

The language of the Supreme Court in WINTERS v. NEW YORK, 333 U.S. 507, at page 515, is applicable:

> "The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement. The crime 'must be defined with appropriate definiteness', CANTWELL v. CONNECTICUT, 310 U.S. 296; PIERCE v. UNITED STATES, 314 U.S., 306,311."

And at page 516 in the same opinion the Court quotes with approval the following from STATE v. DIAMOND, 27 New Mexico 477, 202 Pac. 988:

> "Where the statute uses words of no determinative meaning, or the language is so general and indefinite as to embrace not only acts commonly recognized as reprehensible, but also others which it is unreasonable to presume were intended to be made criminal, it will be declared void for want of certainty."

To the same effect, but in slightly different words, is the law as laid down in STANDARD OIL CO. v. FORTERIE, 12 Fed. Supp. 100:

> "A Statute which is so indefinite that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the provisions as to due process of law."

And in any event, whether criminal or not, the same rule applies:

> "The principle of due process of law requiring reasonable certainty of description in fixing a standard for exacting obedience from a person in advance has application as well in civil cases as in criminal legislation, SMALL COMPANY v. AMERICAN SUGAR REFINING CO, 267 U.S. 233, 238.

The gravamen of the offense is to own or occupy a building found by a majority of the Board of Condemnations to be "in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity."

The term "insanitary" is one of purely abstract meaning; and when limited and qualified by the reference to "the life or health of the occupants thereof or persons living in the vicinity" it becomes an abstraction which depends upon the susceptability to disease or sickness of the particular occupants of the particular premises, and/or of the "persons living in the vicinity."

The Statute does not give any measure or standard at all by which the Board of Condemnations is to be bound or guided so as to know which buildings are of the requisite degree of insanitariness and which are not.

If the occupants of the land and all of the people in the vicinity of the building have a record of perfect health, and there were no evidences of any illnesses which could possibly be traced to the condition of the building, - could the building, regardless of its condition, be condemned?

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What does the term "insanitary" mean? It is not a technical term, nor a "word of art" with a fixed and definite meaning. The Standard Dictionary defines it to mean "not sanitary; prejudicial to health, likely to cause disease." At what point does an insanitary condition, as defined above, become prejudicial to health? at what point does the physical condition of a dwelling house and its environment become so prejudicial to health as to become dangerous to the dwellers therein? and at what point does it become dangerous to the inhabitants of the surrounding neighborhood? It is vain to search for a definite and fixed meaning in the decisions of the courts. None can be found. In JOHNSON v. SCHMIDT, 90 Wisconsin, 301; 63 N.W. 288, 289, the Court recognized this and said:

> "The word sanitary is one of purely abstract meaning."

And since "sanitary" is purely abstract, so is the word "insanitary" abstract. The Statute under which the Commissioners and the Board assumed to act, and under which the action of the defendants was pursued did not define what was meant by the word. The Commissioners of the District of Columbia did not attempt to define it and delegated to the Board of Condemnations and to its agents the power to determine as they went along what the term means with respect to any piece of real estate in the District of Columbia. Of this situation the Supreme Court has spoken often:

WINTERS v. NEW YORK, Supra, at page 516.

In BUTLER v. STATE OF MICHIGAN, (#16, October Term, 1956,) decided by the Supreme Court of the United States, was a

case involving a Statute of Michigan denouncing the sale of books containing "obscene, immoral, lewd and lascivious language, - tending to incite minors to violent, depraved and immoral acts, manifestly tending to the corruption of the morals of youth." Butler was charged with violating the Statute and moved to dismiss the charge upon the ground, among others, that the Statute (Section 343, Michigan Penal Code), violated the Constitution of the United States in that it

> "(3) failed to provide a sufficiently definite standard of guilt."

The motion was overruled, Butler was convicted, and the case found its way to the Supreme Court of the United States upon the above point of due process. That Court held that this point was well taken and reversed the conviction.

In CONNALLY v. GENERAL CONSTRUCTION COMPANY, 260 U.S., 385, 389, 391, the rule to be applied in determining whether a standard of sufficient definiteness and certainty is contained in a Statute is the following:

> "The question whether given legislative enactments have been thus wanting in certainty has frequently been before this court. In some of the cases the statutes were upheld. The precise point of differentiation in some instanes is not easy of statement; but it will be enough for present purposes to say generally that the decisions of this court, upholding statutes as sufficiently certain, rested upon the conclusion that they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them, HYGRADE PROVISION COMPANY v. SHERMAN, 266 U.S. 497, 502; OMEACCHEVARRIA v. Idaho, 246 U.S., 343, 348, or a well-settled common law meaning, notwithstanding an element of degree in the definition as to which estimates might differ, NASH v. UNITED STATES, 229 U.S. 373, 376, INTERNATIONAL HARVESTER CO. v. KENTUCKY, 234 U.S. 216; or, as broadly stated by Mr. Chief Justice White in UNITED STATES v. L. COHEN GROCERY COMPANY, 255 U.S. 81, 92, 14 A.L.R. 1045, 'that for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded. See, also WATERS-PIERCE OIL CO., 212 U.S., 86, 108.'"

Mr. Justice Cardoza, in PEOPLE v. MANCUSO, speaking for the New York Court of Appeals, said upon the same subject:

> "Much will depend on the distinction whether the standard is an old one, long recognized in law and life (INTERNATIONAL HARVESTER CO. v. KENTUCKY, 234 U.S. 216, 223,) or one novel and unfamiliar, not yet approaching certainty, at least in measurable degree, through habitude and example. On one side of the line is the standard of care or judgment enacted by the statute in supplying a working place or tools for servants," (citing instances,) "or in driving on a highway, NASH v. PRIBE, 229 U.S. 373, page 377; PEOPLE v. ANGELO, 246 New York, 451, or in the avoidance of a monopoly or of undue restraints on competition (NASH v. U.S. supra . . .) In these and like instances a great body of precedents on the civil side, coupled with familiar practice, make it comparitively easy for common sense to keep to what is safe. INTERNATIONAL HARVESTER CO. v. KENTUCKY, supra. On the other hand is a statute

imposing a penalty on any person who makes 'any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries' (UNITED STATES v. L. COHEN GROCERY CO., 255 U.S. 81, 86, where neither accepted norms of conduct or common-law traditions of customery diligence give definiteness and significance to acts to be avoided (CONNALLY v. GENERAL CONSTRUCTION CO. 269 U. S. 385; CLINE v. PRINK DAIRY CO., 274 U. S. 445, 459). Not even a civil liability can rest upon a prohibition so vague and indeterminate."

And, as was well said by the Supreme Court of Illinois in VALLAT v. RADIUM DIAL CO., 360 Ill. 407:

"In order that a statute may be held valid, the duty imposed by it must be prescribed in terms definite enough to serve as a guide to those who have the duty imposed upon them. Such definiteness may be produced by words which have a technical or other special meaning well enough known to permit compliance therewith, or words which have an established meaning at common law through decisions; but if the duty is imposed by statute by use of words which have not yet acquired definiteness or certainty and which are so general and indefinite that they furnish no such guide, the statute must be declared to be invalid. When it leaves the Legislature a law must be complete in all its terms, and it must be definite and certain enough to enable every person, by reading the law, to know what his rights and obligations are and how the law will operate when put in execution. MAYHEW v. NELSON, 346 Ill. 381, 387. If the statute leaves it to a ministerial officer to define the thing to which the statute is to be applied, and if the definition is not commonly known in the modes already pointed out, the act becomes invalid, because it creates an unwarranted and void delegation of legislative power. PEOPLE v. YONKERS, 351 Ill. 139, 145.

"No decisions are cited which contain definitions of the words 'reasonable and approved devices, means or methods,' and it is not contended that this phrase had a common-law meaning or generally accepted meaning, or that the act itself furnishes a clear, definite, and certain enough meaning to enable employers to know what norms of conduct and what standard of equipment are intended by section 1," (of the Illinois Occupational Diseases Act.)

"Accepted rules of construction do not avail to show the legislative intent, and courts have no power to supply the omissions of this statute. No person reading this enactment can know what rights it confers and what obligations and duties it lays upon the" (Defendant.)

3

CONCLUSION

The Statute under which Appellees claim authority to condemn and demolish buildings in the District of Columbia is void because it contravenes the requirements of due process of law. Therefore, Appellees' condemnation of the building here involved, and their threatened demolition of the same, is without authority of law. The action of the District Court below, dismissing Appellant's suit to enjoin such destruction, was erroneous, and should be reversed.

Respectfully submitted,

Wm. A. Gallagher

Wm. A. GALLAGHER,
1804 M Street, N.W.,
Washington, D. C.
ATTORNEY FOR APPELLANT.

A copy of Appellant's Brief
and a copy of the Joint Appendix
received this 12th day of
March, 1957.

(s) J. Hampton Barnes Jr.

Assistant Corporation Counsel,
ATTORNEYS FOR APPELLEES.

SUPPLEMENT A

STATUTE

The Statute in issue here is Section 616, et seq. of TITLE 5 of the District of Columbia Code of Law and what are believed to be the pertinent parts thereof are set out below:

§ 5-616. Inspection by Commissioners - Condemnation - Delegation of authority.

That the Commissioners of the District of Columbia are authorized to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be demolished and removed, as may be required by the provisions of sections 5-616 to 5-634. The Commissioners may authorize and direct the performance of the duties imposed on them by sections 5-616 to 5-634 by such officers, agents, employees, contractors, employees of contractors, and other persons as may be designated, detailed, employed, or appointed by the said Commissioners to carry out the purposes of sections 5-616 to 5-634. The Commissioners or their designated agent or agents are authorized to investigate, through personal inquiry and inspection, into the sanitary condition of any building or part of a building in said District, except such as are under the exclusive jurisdiction of the United States. The Commissioners, and all persons acting under their authority and the authority contained in sections 5-616 to 5-634, may, between the hours of 8 o'clock ante-meridian and 6 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1005, ch. 1055; Aug. 28, 1954, 68 Stat. 884, ch. 1032, § 1.)

* * * * *

§ 5-617. Board for the Condemnation of Insanitary Buildings - Condemnation Review Board - Members - Procedure.

(a) The Commissioners are directed to appoint or designate two separate boards, each to consist of not less than three members, to perform the duties and functions required by sections 5-616 to 5-634, as follows:

(1) A Board for the Condemnation of Insanitary Buildings to examine into the sanitary condition of buildings in the District of Columbia, to determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity, and to issue appropriate orders of condemnation requiring the correction of such condition or conditions or to require the demolition of any building, in accordance with the provisions of sections 5-616 to 5-634.

* * * * *

(b) A majority of the members of each of the boards established by subsection (a) of this section shall constitute a quorum, and a majority vote of the members present shall be required in connection with any act of either of the said boards. No person shall act as a member of either of the said boards who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

* * * * *

§ 5-618. Condemnation procedure - Notice - Order - Remedial action by owner - Occupancy of condemned buildings.

Whenever the Board for the Condemnation of Insanitary Buildings shall find that any building or part of building is in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, the owner of such building shall be served with a notice requiring him to show cause, within a time to be specified in such notice, why such building or part of building should not be condemned. The time to be fixed in such notice shall not be less than ten days, exclusive of Sundays and legal holidays, after the date of service of said notice, unless the Board shall find that the insanitary condition of such

building or part of building is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which case a lesser time may be specified in said notice. If within the time to show cause fixed by the Board, the owner shall fail to show cause sufficient in the opinion of the Board to prevent the condemnation of such building or part of building, the Board shall issue an order condemning such building or part of building and ordering the same to be put into sanitary condition or to be demolished and removed within a time to be specified in said order of condemnation, and shall cause a copy of such order to be served on the owner and a copy to be affixed to the building or part of building condemned. The Board shall give the owner reasonable time within which to put the building in sanitary condition, but such time shall be not less than six months after the date of service of said order on said owner, unless the Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which event the Board may fix a lesser time. From and after fifteen days, exclusive of Sundays or legal holidays, or within such additional time as may be fixed by the Board, after a copy of any order of condemnation has been affixed to any condemned building or part of building. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935; 49 Stat 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch 762; Aug. 28, 1954, 68 Stat. 885, ch. 1032, § 3.) * * *

§ 5-619. Occupancy of condemned building.

No person having authority to prevent shall permit any building or part of building condemned to be occupied, except as specially authorized by the Board for the Condemnation of Insanitary Buildings under the authority contained in sections 5-616 to 5-634, after fifteen days, exclusive of Sundays and legal holidays, or within such additional time as may be fixed by the Board, from and after the date of service of a copy of the order of condemnation on the owner of such building; or, if a copy of such order of condemnation has been affixed to the condemned building or part of building at a date subsequent to the date of service of the notice on the owner, after fifteen days, exclusive of

Sundays and legal holidays, or within such additional time as may be fixed by the Board, from the date on which said copy of such order of condemnation was so affixed. * * *

§ 5-620. Repairs or changes - Demolition - District of Columbia Building Code.

The owner of any building or part of building condemned under the provisions of sections 5-616 to 5-634 shall, within the time specified by the Board for the Condemnation of Insanitary Buildings in the order of condemnation, or any extension of time which may be granted by the Board, (1) make such changes or repairs as will remedy the conditions which led to the condemnation of such building or part of building, or (2) cause such building or part of building to be demolished and removed: PROVIDED, That any owner repairing a building or part of building in accordance with the provisions of sections 5-616 to 5-634 shall be required to make only those repairs which are reasonably related to a correction of the insanitary condition or conditions found by said Board to exist in or about said building, and nothing in sections 5-616 to 5-634 shall be construed as authorizing the Board to require any repair not reasonably related to the correction of any insanitary condition in or about such building, or to require such building to be brought fully into conformity with the District of Columbia Building Code or other building regulations in effect at the time such repairs are made. Whenever any building is repaired or demolished in accordance with the requirements of this section, such repair or demolition shall be performed in such manner and under the authority of such permit as may be required by any applicable law or regulation.

* * * * *

§5-622. Owner's failure to comply with order - Repair or demolition by Board for the Condemnation of Insanitary Buildings - Payment of costs - Effect of appeal.

If the owner of any building or part of building condemned under the provisions of sections 5-616 to 5-634 shall fail to remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the condition or conditions which led to the condemnation

thereof, by failing to cause such building or part of building to be put into sanitary condition or to be demolished and removed within the time specified by said Board in the order of Condemnation or any extension thereof, he shall be deemed guilty of a misdemeanor and be liable to the penalties provided by section 5-631, and such building or part of building may be put into sanitary condition or be demolished and removed under the direction of said Board, and the cost of such repairs or such demolition and removal, including the cost of making good damage to adjoining premises (except such as may have resulted from carelessness or willful recklessness in the demolition or removal of such building), and the cost of publication, if any, herein provided for, less the amount, if any, received from the sale of the old material, shall be assessed by the Commissioners of the District of Columbia as a tax against the premises on which such building or part of building was situated, such tax to be collected in the same manner as general taxes are collected in the District of Columbia: PROVIDED, That the pendency of any review or appeal provided for by sections 5-628 and 5-629 shall stay the operation of any order issued by said Board, unless said Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity. (May 1, 1906, 34 Stat. 157, ch. 2073; Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762; Aug. 28, 1954, 68 Stat. 886, ch. 1032, § 7.)

* * * * *

§5-630. Neglect by tenants or occupants of building.

Whenever any insanitary condition which has led to the condemnation of a building or part of building has been caused in any part by the action or by the neglect of the tenant or tenants, occupant or occupants thereof, such tenant, tenants, occupant, or occupants shall be guilty of a misdemeanor and be liable to the penalties provided in section 5-631. ****

§ 5-631. Penalties.

Any person violating or aiding or abetting in violating sections 5-618, 5-619, 5-620, 5-622, 5-626, 5-627, or 5-630 shall, upon

conviction thereof in the Municipal Court for the District of Columbia, upon information filed in the name of said District, be punished by a fine of not more than $100 or by imprisonment for not more than ninety days; and each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense.

ORDER

ORDER ESTABLISHING BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Organization order No. 102, 54-2034, C.S. 5-601 of the Board of Commissioners of the District of Columbia established the Board for the Condemnation of Insanitary Buildings as follows:

September 27, 1954

Board for the Condemnation of Insanitary Buildings

Pursuant to the authority contained in Public Law 681, 83rd Congress, it is hereby ordered:

* * * * *

Part II

Purpose. - The Board for the Condemnation of Insanitary Buildings is established to examine into the sanitary condition of buildings in the District of Columbia, to determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity and, upon completion of an investigation by the Board of the premises in question, to issue appropriate orders of condemnation requiring the correction of such condition or conditions or to require the demolition of any building, in accordance with the provisions of Public Law 681, 83rd Congress.

Part III

Powers, authorities, and jurisdiction. - All powers, authorities, and jurisdiction authorized by Public Law 681, 83rd Congress to be exercised by the Board for the Condemnation of Insanitary Buildings are hereby assigned to such Board. The said Board shall have jurisdiction over all matters which as of the effective date of Public Law 681, 83rd Congress, were pending before the Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953.

* * * * *

Part V

Effective date. - This Order shall be effective on and after September 27, 1954.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

PATRICIA E. FAHEY, Appellant, v. ROBERT E. MATTHE, et al., Appellees.	)	NO. 13,625

JOINT APPENDIX

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JOINT APPENDIX

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

PATRICIA E. FAHEY,
2508 - 22nd Street, N. E.
Washington, D. C.

Plaintiff

vs.

COLONEL ROBERT E. MATTHE,
107 Municipal Building,
14th and Pennsylvania Ave., N.W.
Washington, D. C.
and
COLONEL WM. H. CARY, JR.,
107 Municipal Building,
14th and Pennsylvania Ave., N.W.
Washington, D. C.
and
JOSEPH J. ILGENFRITZ,
Municipal Building
14th and Pennsylvania Ave., N.W.
Washington, D. C.

Defendants

2931-56

F I L E D

Jul 13 1956

Harry M. Hull, Clerk

C O M P L A I N T F O R I N J U N C T I O N

PENDENTE LITE AND PERMANENT

1. The Plaintiff, Patricia E. Fahey, is a citizen of the United States, a resident of the District of Columbia, and files this suit in her own right.

2. The defendants are sued personally and individually as members of the "Board for the Condemnation of Insanitary Buildings"

of the District of Columbia, under the pretended authority of an Act of Congress.

3. The Court has jurisdiction of this suit under its general equitable jurisdiction.

4. The plaintiff has a legal and equitable interest in Lots 17 and 18 in Square 4020 in the District of Columbia, improved by a residence known as Premises 1441 Girard Street, Northeast in said District. The record legal title to said lots and premises is in the name of Cornelia Suikerbuik, now deceased. There are no other assets in the estate of said decedent; and the real estate above described is by law subjected to the payment of the debts of said estate. The plaintiff is the only creditor of said estate as more fully set out below.

5. The said Cornelia Suikerbuik, a resident of the District of Columbia and a citizen of the United States, residing at the above-mentioned premises until the time of her death, departed this life on December 24, 1951, at the age of 88 years. Prior to her death she had been ill for a long period of time during which time the petitioner, at her request, had attended to her wants, nursed her, kept house for her, paid bills and taxes for her from time to time out of petitioner's funds; and was promised by said Cornelia Suikerbuik that she would be compensated for this by a testamentary devise of said real estate. Such devise was never made; and said estate is indebted to plaintiff in excess of, to-wit, $6,000.

6. The sole heirs at law and next of kin of said deceased are citizens and residents of Holland, and they have taken no steps whatever to administer her estate although fully informed concerning it, nor have they done anything to preserve or

protect the estate from the damage and vandalism by which ithas repeatedly suffered, as more fully set forth below. Because of their neglect and in order to preserve the estate and, as well, to protect her security for payment of her claim, plaintiff has filed in this Court a petition for appointment as administrator of the said estate which is now pending in the Probate Division of the Court.

7. That after the death of said Cornelia Suikerbuik, this plaintiff saw to her burial in accordance with her last wishes, and paid the funeral bills and other outstanding obligations of decedent's estate, and since that time has paid the real estate tax assessed against the property to save it from being sold for taxes. She also continued to occupy the residence upon the premises to protect it from vandals and juvenile delinquents who had been committing depredation upon other properties in the vicinity; and to keep it in repair. The petitioner says that the property was never in dilapidated nor unsanitary condition during the time she so occupied it, but was in a sound and livable condition until the happening of the unlawful and unauthorized actions of the defendants set forth below.

8. The Plaintiff was compelled, upon the instance of the defendants, to remove from the premises; since that time, although she has visited the property daily except when restrained therefrom by illness, that juvenile trespassers and delinquents, vandals, have continuously entered into and upon the property and committed damage and depredation thereon; that they have broken into the house by prying open the door and breaking through the windows, they have stolen and destroyed personal property therein belonging to the estate and to this plaintiff, and upon their recent visitations have completely wrecked the windows;

knocked the foundation pillars from under the porch; almost totally destroyed the stairway leading from the street to the eminence upon which the house sits; and scattered the house furnishings, linens, pictures, china, tableware, mattresses and articles of furniture, as well as many books and papers, through and around the house and upon the premises adjacent to it; all to the grievous damage of the estate and to the injury of plaintiff's legal right to look to said property for the payment of the estate's indebtedness to her.

9. And plaintiff says that although the vandalism described above was in violation of the criminal law as well as of the civil law, no effective action was ever taken by the Government of the District of Columbia to prevent the same, although the facts were well known to it and to its agents and employees. And plaintiff avers that the condition of the property at the present time is solely due to the said action of the said Government of the District of Columbia, its agents and employees, in wrongfully denying plaintiff the right to occupy the said premises so that she might prevent such depredation, and their negligence after so doing, in failing to protect the said property, as was their duty in the premises.

10. And petitioner says upon information and belief that now the said defendants, because of the condition of the premises for which they are primarily responsible, have undertaken to authorize by contract the total destruction and removal of the said residence from the premises, all of which cost will be charged against the real estate which is subject to the claim of this plaintiff, the result of which will be a forced sale of the property to satisfy the said cost, with consequent loss

to this plaintiff. This threatened action is without warrant or authority of law.

11. Plaintiff further says that during all the time aforesaid she had made and paid for continuous repairs to the said premises in an unsuccessful attempt to keep abreast of the damage and depredation. She caused the erection of a brick side wall to the house with steel and glass fenestra windows and has obtained the services of a licensed and competent architect who has prepared plans and blue prints for the repair and renovation of the aforesaid dwelling house; so that the value of the property may be enhanced and not depreciated and lost as it will be unless the defendants are restrained.

12. And plaintiff further says that she has not taken any steps to remedy the damage done during the past weeks as described in paragraph 8 above, having been requested and directed by the Police Department to leave the premises in its present condition for evidentiary purposes against the trespassers, some of whom have been identified. And it is while the property is in this status that the defendants propose to demolish it.

13. And plaintiff says that the action of the defendants is arbitrary, capricious and without authority of law; and is bureaucratic and unrealistic, and will result in irreparable damage to the estate of the deceased, Cornelia Suikerbuik, and irreparable damage to this plaintiff.

WHEREFORE, the premises considered, plaintiff prays:

(1) That the defendants be required to answer the exigencies of this complaint under oath;

(2) That the defendants and each of them be restrained pendente lite and permanently from the proceedings and actions

now in process and threatened, as we have set forth in the above complaint;

(3) And for such other and further relief as to the Court may appear necessary and just.

/sd/ PATRICIA E. FAHEY
Patricia E. Fahey

District of Columbia, SS:

I solemnly swear that I have read the foregoing Complaint subscribed by me, and know the contents thereof, and the same is true.

/sd/ PATRICIA E. FAHEY
Patricia E. Fahey

Sworn and subscribed to before me, a Notary Public this 13 day of July, 1956.

/sd/ MARY M. COLE

/sd/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Plaintiff
1804 M Street Northwest
Washington, D. C.

ANSWER OF DEFENDANTS

(F I L E D
(AUG 3 - 1956
(Harry M. Hull,
(Clerk.

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The Court lacks jurisdiction of the subject matter.

Third Defense

The plaintiff has failed to join indispensable parties and the action has not been brought in the name of the real parties in interest.

Fourth Defense

Plaintiff is guilty of laches.

Fifth Defense

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2. Defendants admit that they are members of the Board of Condemnation of Insanitary Buildings of the District of Columbia. The remaining allegations of paragraph 2 are denied.

3 and 13. Defendants deny the allegations contained in paragraphs numbered 3 and 13.

4. Defendants admit that the record title to said lot and premises is in the name of Cornelia Suikerbuik. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4.

5, 6, 11, and 12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs numbered 5, 6, 11, and 12.

7. Defendants deny the allegations in the last sentence of paragraph 7, Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 7.

8. Defendants admit that at their instance plaintiff was required to remove herself from the premises and say that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph numbered 8.

9. Defendants admit that any vandalism at the premises, is a violation of the criminal law. Defendants deny the remaining allegations in paragrapn numbered 9.

10. Defendants admit that because of the condition of the premises they have undertaken to remove the residence on the premises and admit that the cost will be charged against the real estate. Defendants deny that the threatened action is without warrant or authority in law. Defendants are without knowledge or information sufficient to form a belief as to the trust of the remaining allegations.

Defendants deny each and every other allegation in the complaint not expressly admitted or otherwise answered.

/sd/ VERNON E. WEST
VERNON E. WEST C.H.G.
Corporation Counsel, D. C.

/sd/ MILTON D. KORMAN
MILTON D. KORMAN By H.B.P.
Assistant Corporation Counsel,
D.C.

/sd/ HUBERT B. PAIR

HUBERT B. PAIR
Assistant Corporation Counsel, D.C.

/sd/ J. HAMPTON BAUMGARTNER, JR.

J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

Certificate of Service

I hereby certify that the foregoing Answer was mailed, postage prepaid, to William A. Gallagher, Esq., attorney for plaintiff, 1804 M Street, N. W., Washington, D. C., this 2nd day of August, 1956.

/sd/ J. HAMPTON BAUMGARTNER, JR.

J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

FILED
AUG 29 2956
HARRY M. HULL, Clerk

Defendants, members of the Board for the Condemnation of Insanitary Buildings, move the Court to dismiss the above entitled cause or, in the alternative, to grant summary judgment in their favor upon the following grounds:

1. The complaint fails to state a claim upon which relief can be granted for the following reasons:

a. There are indispensable parties who have not been joined in this action.

b. The action has not been brought in the name of the real parties in interest.

c. The plaintiff lacks capacity to sue, and

d. The Court lacks jurisdiction of the subject matter.

2. Consideration of the pleadings, together with the petitions for letters of administration filed in Administration No. 82048 in the Probate Division of this Court, and the affidavit of Richard L. Mattingly, which petitions and affidavit are incorporated herein and made a part hereof by reference, demonstrate that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law.

/sd/ VERNON E. WEST
VERNON E. WEST per M.D.K.
Corporation Counsel, D. C.

/sd/ MILTON D. KORMAN
MILTON D. KORMAN
Assistant Corporation Counsel, D.C.

/sd/ HUBERT B. PAIR

HUBERT B. PAIR
Assistant Corporation Counsel, D.C.

/sd/ J. HAMPTON BAUMGARTNER, JR.

J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

Attorneys for Defendants
District Building
Washington, D. C.

Certificate of Service

I hereby certify that a copy of the foregoing Motion to Dismiss Or, In the Alternative, For Summary Judgment, Memorandum of Points and Authorities in Support thereof, and Affidavit of Richard L. Mattingly were mailed, postage prepaid, to William A. Gallagher, attorney for plaintiff, 1804 M Street, N. W., Washington, D. C., this 29th day of August, 1956.

/sd/ J. HAMPTON BAUMGARTNER, JR.

J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

AFFIDAVIT OF RICHARD L. MATTINGLY

(F I L E D
(AUG 29 1956
(HARRY M. HULL, Clerk

DISTRICT OF COLUMBIA, ss:

Richard L. Mattingly being first duly sworn on oath deposes and says:

I am the executive secretary to the Board for Condemnation of Insanitary Buildings. As such, I have custody of the records and files of the Board and I am charged with the duty of carrying out the operation of the Board for the Condemnation of Insanitary Buildings and have personal knowledge of the facts hereinafter set forth.

In May, 1949, an inspection was made of premises 1441 Girard Street, N. E., after a complaint regarding the keeping of chickens without a permit and having refuse and garbage about the yard. This inspection disclosed that the building was in a very bad state of repair and in the opinion of the Board of Condemnation in such insanitary condition as to endanger the health and lives of the occupant and persons living in the vicinity. Consequently a notice to show cause why the building should not be condemned was served upon the owner. This notice was served on the owner Cornelia Suikerbuik on July 26, 1949. Miss Patricia Fahey was residing with Mrs. Suikerbuik. Many extensions were granted to the owner and due to her illness further action toward condemnation was held in abeyance. Mrs. Suikerbuik died on December 24, 1951.

Thereafter extensive search was made to determine who was the new owner of the property but no one could be found. There was no will. Miss Patricia Fahey continued to occupy the

premises. A new notice of proposed condemnation was published against the unknown heirs or assigns in the Washington Evening Star newspaper from December 5 through December 14, 1952, in accordance with Section 10 of the Act of 1906.

Thereafter the official notice of condemnation was published in the Evening Star from January 10 through 19, 1953. Miss Fahey, through an attorney, requested permission to occupy the building while repairs were undertaken. Certain extensions were granted her as she said she planned to have the building renovated. On numerous occasions Miss Fahey and her attorney were summoned for hearings in the Municipal Court Section of the Corporation Counsel's Office because the work was not progressing satisfactorily.

During the fall of 1953 and the spring of 1954 many inspections were made, and it was determined that the work was not progressing. No one could be found about the premises. However, the house still contained furniture and there were signs that someone was occupying the house occasionally.

Section 19(b) of the Act of August 28, 1954, granted those houses already under condemnation a six month reprieve from September 28, 1954. Subsequently, a warrant was served on Miss Fahey on April 18, 1955, charging her with illegal occupancy of the dwelling. This warrant was subsequently nolle prosse. A new warrant was issued for non-compliance with the condemnation order but this also was dropped. Subsequently, inspections in July, August, September, October, and November, 1955, showed that no work was in progress.

Thereafter the Board invoked the provisions of Section 5-622 to have the building demolished and the costs assessed by

AFFIDAVIT OF RICHARD L. MATTINGLY

(F I L E D
(AUG 29 1956
(HARRY M. HULL, Clerk

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Section 19(b) of the Act of August 28, 1954, granted those houses already under condemnation a six month reprieve from September 28, 1954. Subsequently, a warrant was served on Miss Fahey on April 18, 1955, charging her with illegal occupancy of the dwelling. This warrant was subsequently nolle prosse. A new warrant was issued for non-compliance with the condemnation order but this also was dropped. Subsequently, inspections in July, August, September, October, and November, 1955, showed that no work was in progress.

Thereafter the Board invoked the provisions of Section 5-622 to have the building demolished and the costs assessed by

the Commissioners as a tax against the premises. Notice was given through publication in the Evening Star on June 4, 5, and 6 that the personal property contained in the building after June 13, 1956, would be treated as abandoned and turned over to the Police Department. A notice to this effect was personally served upon Miss Pahey on June 1, 1956, by the Metropolitan Police Department. Bids for the demolition were solicited and the contract was awarded to the lower bidder, the A & A Wrecking Company, Inc., Hyattsville, Maryland, for $1,240.00 on June 26, 1956. The personal property was removed under the direction of the Board and given over to the custody of the Property Clerk of the Police Department on July 12, 1956, and the wrecking company was directed to commence operations. Before they began the plaintiff brought this injunctive action on July 13, 1956, and the contractor was advised to cease operations pending the outcome of the law suit.

All steps taken by the Board in this case were taken strictly in accordance with the laws applicable and upon the advice of counsel. The records disclose that plaintiff has never filed an application for appeal to the Condemnation Review Board as provided for in Section 13 of the Act of 1954, (Sec. 5-628, Supp. IV, D. C. Code 1951).

/sd/ RICHARD L. MATTINGLY
RICHARD L. MATTINGLY

Sworn to and subscribed before me the 29th day of August, 1956.

/sd/ ERNEST F. WILLIAMS
Notary Public, D. C.

My commission expires:
January 14, 1957

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION

FILED
SEP 18 1956
HARRY M. HULL, Clerk

The Motion is without merit, for the following reasons:

1. The jurisdiction of the Court is well recognized; as well as the right to relief.

2. No necessary or indispensable parties are omitted.

3. The defense of Laches is without merit.

4. The suit is not filed under the terms of the Act of Congress relating to appeals in administrative proceedings; and in any event that act does not apply in cases seeking the relief asked in this cause.

/s/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Plaintiff

MOTION FOR LEAVE TO AMEND COMPLAINT

(F I L E D
(SEP 21 1956
(HARRY M. HULL, Clerk

Comes now the Plaintiff, by her attorney, and moves the Court for leave to amend her complaint herein.

/sd/ WM. A. GALLAGHER

WILLIAM A. GALLAGHER
Attorney for Plaintiff
RFD #2 Gaithersburg, Md. or
1804 M Street, N. W.
Washington, D. C.

MEMORANDUM OF AUTHORITY

Rule 15, Fed. Rules of Civ. Proc. Sec. a.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 21st day of September, 1956, served a copy of the above motion by leaving a copy thereof for the attention of J. Hampton Baumgartner, Jr., Esq., Assistant Corporation Counsel, Office of the Corporation Counsel, Municipal Building, 14th and Pennsylvania Avenue, N. W., Washington, D. C.

/sd/ WM. A. GALLAGHER

WILLIAM A. GALLAGHER

ORDER

FILED
SEP 21 1956
HARRY M. HULL, Clerk

This cause came on for hearing on defendants' motion to dismiss, or in the alternative, for summary judgment, and, upon consideration thereof, of the affidavit and memorandum in support of said motion and in opposition thereto, and, after oral argument by counsel for the respective parties, it is by the Court this 21st day of September, 1956,

ORDERED that defendants' motion to dismiss be, and the same is hereby, granted and that judgment be entered for the defendants.

/s/ F. DICKINSON LETTS
JUDGE

Submitted by:

/s/ J. HAMPTON BAUMGARTNER, JR.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D. C.

Certificate of Service

I hereby certify that a copy of the foregoing Order was mailed postage prepaid, to William A. Gallagher, Esq., Attorney for Plaintiff, R.F.D. 2, Gaithersburg, Maryland, this 20th day of September, 1956.

/s/ J. HAMPTON BAUMGARTNER, JR.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

ORDER

(F I L E D
(OCT 15 1956
(HARRY M. HULL, Clerk

Upon consideration of plaintiff's motion for leave to amend complaint and memorandum of authority in support thereof, it is by the Court this 15th day of October, 1956,

O R D E R E D that plaintiff's motion for leave to amend complaint be and the same is hereby denied.

/sd/ F. DICKINSON LETTS
F. DICKINSON LETTS, JUDGE

Submitted by:

/sd/ J. HAMPTON BAUMGARTNER, JR.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

Certificate of Service

I hereby certify that a copy of the foregoing Order was mailed, postage prepaid, to William A. Gallagher, Esq., Attorney for Plaintiff, R.F.D. 2, Gaithersburg, Maryland, this 12th day of October, 1956.

/sd J. HAMPTON BAUMGARTNER, JR.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

NOTICE OF APPEAL

FILED
OCT 22 1956
HARRY M. HULL, Clerk

Notice is hereby given this 22d day of October, 1956, that Patricia E. Fahey, Plaintiff herein, hereby appeals to the United States Court of Appeals for the District of Columbia from the Orders of this Court entered on the 21st day of September, 1956 and on the 15th day of October, 1956, in favor of Defendants Matthe, et al., against said Patricia E. Fahey, Plaintiff.

/s/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Plaintiff
1804 H Street, N. W.
Washington, D. C.
and
R.F.D. #2 Gaithersburg, Md.

Serve copy on

J. Hampton Baumgartner, Jr.
AssistantCorporation Counsel
Municipal Building
14th and Penna. Ave., N. W.
Washington, D. C.

ASSIGNMENT OF ERRORS

FILED
NOV 16 1956
HARRY M. HULL,
Clerk.

The Plaintiff (Appellant) asserts as her assignment of errors in this cause that the District Court erred in the following particulars:

1. In dismissing the complaint of the appellant.
2. In holding that appellant was without sufficient interest in the real estate involved in this cause to entitle her to relief.
3. In holding that the Act of Congress under which the appellees assumed to act was valid and constitutional.
4. In holding that appellants complaint did not assert a cause of action.
5. In holding that the appellant was not entitled to relief because of laches.
6. And for other error appearing upon the face of the record.

/sd/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Appellant
1804 M Street, N. W.
Washington, D. C.

Certificate of Service

I certify that I have mailed a copy of the above assignment of errors to counsel for the appellees, the Corporation Counsel for the District of Columbia, addressed to his official office, this 16th day of November, 1956.

/sd/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER

DESIGNATION OF RECORD ON APPEAL

(F I L E D
(NOV 16 1956
(HARRY M. HULL, Clerk

The Clerk of the District Court will please prepare the record on appeal herein, and include therein the following:

1. Complaint and summons,
2. Answer of defendants,
3. Motion to dismiss and affidavit of Richard L. Mattingly,
4. Opposition to motion to dismiss,
5. Motion for leave to amend complaint,
6. Order granting motion to dismiss,
7. Order denying leave to amend,
8. Notice of appeal,
9. Assignment of errors,
10. This designation of record.

/sd/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Appellant
1804 M Street, N. W.
Washington, D. C.

I certify that I have mailed a copy of the above designation of record to counsel for the appellees, the Corporation Counsel for the District of Columbia, this 16th day of November, 1956.

/sd/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Appellant

COUNTER-DESIGNATION OF RECORD ON APPEAL

(F I L E D
(NOV 21 1956
(HARRY M. HULL, Clerk

The Clerk of the Court will please include, as additional parts of the record on appeal in the above-entitled cause, the following papers presently on file in the Probate Division of this Court in Administration Number 82048:

1. Petition of Lena Agnes Jones for letters of administration filed in February 1953.

2. Answer of Patricia E. Fahey topetition of Lena Agnes Jones for letters of administration filed February 1953.

3. Cross-petition of Patricia E. Fahey for letters of administration filed in June 1956.

Each of such papers having been incorporated by reference in the motion of the defendants to dismiss or, in the alternative, for summary judgment filed in the above-entitled cause.

/sd/ CHESTER H. GRAY
CHESTER H. GRAY By HBP
Corporation Counsel, D. C.

/sd/ MILTON D. KORMAN
MILTON D. KORMAN By HBP
Principal Assistant Corporation Counsel, D. C.

/sd/ HUBERT B. PAIR
HUBERT B. PAIR
Assistant Corporation Counsel, D.C.

/sd/ J. HAMPTON BAUMGARTNER By HBP
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re: Estate of)

Cornelia Suikerbuik) Administration No. 82048

Deceased)

(F I L E D
(FEB 3 - 1953
(Theodore Cogswell
(Register of Wills, D.C.
(Clerk of the Probate Court

PETITION FOR LETTERS OF ADMINISTRATION

The petition of Lena Agnes Jones respectfully represents to this Honorable Court:

1. That your petitioner is a citizen of the United States and a resident of the District of Columbia, and files this petition as the foster daughter and creditor of Cornelia Suikerbuik, the above-named decedent.

2. That the said Cornelis Suikerbuik, a native of Holland, became a citizen of the United Sates and a resident of the District of Columbia, and departed this life on the 24th day of December 1951, and that your petitioner has made diligent search and inquiry for a will insofar as possible and has neither found one nor obtained any information that there was one, and verily believes the decedent died intestate.

3. That prior to her death the decedent had received no word or communication from any relative in Holland for a period of some thirty (30) years, and your petitioner is informed and believes, and therefore avers, that no husband, child or decedent, brother or sister, father or mother, survived.

4. At the time of her death said decedent was seized of Lot 18, Square 4020, known as premises 1441 Girard Street, N. E., Washington, D. C., with improvements thereon, which propeyty is assessed at $1,800.00 for land and $1,800.00 for improvements, and Lot 17, unimproved, assessed at $1,275.00, all paid for.

5. The said decedent was the possessor at the time of her death of personal property of a total estimated value of $500.00.

6. The said decedent, insofar as your petitioner is able to ascertain, after diligent search and inquiry, left no debts other than that for services rendered by petitioner, and there is now due and owing to W. W. Chambers Company the sum of $550.40 for expense of burial.

7. That your petitioner lived with and resided at decedent's home as her foster child since 1910, your petitioner then being the age of 13; that petitioner lived with and resided at decedent's home continuously until the year 1934, and from the latter year petitioner lived mainly separate and apart, but looked after and performed services for decedent to the date of her death; that in consideration of the care and aid and services, love and affection, of your petitionar, the decedent on many occasions promised to leave her property upon death to your petitioner; that during the years from 1918, when petitioner became 21 years of age, and 1950, petitioner looked after decedent, took care of the household for her, cleaning and cooking as necessary, and performing numerous other services, all of which petitioner would value at $1,000.00

each year for the total period of 32 years, or a total valuation of services rendered in the sum of $32,000.00.

WHEREFORE, the premises considered, petitioner prays:

1. That letters of administration be granted to this petitioner.

2. That petitioner be permitted to qualify as administratrix by giving an undertaking in the sum of $_____ _____.

3. That order enter granting all right, title and interest of decedent's property, real and personal, to your petitioner, or, in the alternative, an order be entered directing payment to petitioner for services rendered as will reasonably compensate her from the proceeds of the estate.

4. That the Court grant the petitioner such other and further relief as to the Court may seem just and proper.

/sd/ LENA AGNES JONES
LENA AGNES JONES
508 G Street, N. W.
Washington, D. C.

DISTRICT OF COLUMBIA, ss:

Lena Agnes Jones, being first duly sworn, deposes and says that she has read the foregoing petition by her subscribed and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to these matters she believes it to be true.

/sd/ LENA AGNES JONES
LENA AGNES JONES

Subscribed and sworn to before me this 30 day of January 1953.

/sd/ LLOYD L. HARKINS
Notary Public, D.C.

/sd/ REX K. NELSON

REX K. NELSON
Attorney for Petitioner
416 - 5th Street, N. W.
Washington, D. C.

I personally guarantee the payment of costs amounting to $15.00.

/sd/ REX K. NELSON
Attorney

In re: Estate of)
)
CORNELIA SUIKERBUIK) Administration No. 82048
)
Deceased)

(F I L E D
(FEB 21 1953
(Theodore Cogswell
(Register of Wills, D.C.
(Clerk of the Probate Court

ANSWER OF PATRICIA ELIZABETH FAHEY TO PETITION OF LENA AGNES JONES FOR LETTERS OF ADMINISTRATION

The answer of Patricia Elizabeth Fahey respectfully shows to this Honorable Court:

1. The respondent admits that the petitioner is a citizen of the United States and denies all the remaining allegations of Paragraph 1 of the Petition.

2. The respondent admits that the said Cornelia Suikerbuik, a native of Holland, became a citizen of the United States and a resident of the District of Columbia and departed this life on the 24th day of December, 1951, in the District of Columbia. The respondent knows of no search or inquiry having been made by the petitioner concerning a will, but the respondent has made diligent search and inquiry and found no will and believes the decedent died intestate and can neither admit nor deny the remaining allegations of Paragraph 2 of the petition.

3. The respondent for answer to the allegations of Paragraph 3 of the petition states that the decedent had been in communication with her relatives in Holland within a few years prior to her death, and that although the decedent was not survived by a husband, child of decedent, father or mother, the decedent was survived by the following nephews who live in Holland, sons and daughters of her only sister, Elazina

Kramer nee Van Overloop, who predeceased decedent, namely: Jan Boone, Janna Cornelia van ver Mass nee Boone, Cornelius Boone, and Blazina de Looffe nee Kramer, who are the only heirs at law and are all citizens of Holland.

4. The respondent admits that the piece of real estate described in Paragraph 4 was recorded in the name of the decedent, but states that this respondent was and is the equitable and real owner of the aforesaid real estate having resided thereon since September, 1949, at the express request of the decedent; that the decedent at the time was extremely ill with pneumonia and infirm with age and her doctor stated that someone should stay with her at all times; that the decedent told this respondent that if the respondent did stay with her and take care of her and be a companion to her the rest of her life; that the two of them would enjoy whatever property the deceased had during their joint lives and upon her death she would leave whatever property she had to the respondent; that thereafter the respondent relying upon the promises of the deceased gave up her other occupation and other home, moved in with the deceased and thereafter nursed the deceased throughout her illness until her death on December 24, 1951, performed all the house work, did all the grocery shopping, bought medicine, took care of the needs of the deceased, was her constant companion, reading to her at nights, and performing other personal services and thereby fully performing her agreement with the said Cornelia Suikerbuik.

5. The respondent denies the allegations in Paragraph 5.

6. For answer to Paragraph 6 of the petition, the respondent avers that after the death of the said Cornelia Suikerbuik that this respondent made and incurred the expenses for the funeral arrangements, the same has been fully paid and there is no outstanding indebtedness to the W. W. Chambers Company for the expense of the burial; this respondent denies that the deceased was indebted to the petitioner for services rendered, and as far as this respondent is able to ascertain there are no debts outstanding of the deceased.

7. The respondent denies all the allegations contained in Paragraph 7.

8. For further answer to the petition the respondent avers that the petitioner is not qualified to be granted letters of administration under the provisions of Title 20, Section 20-101 of the District of Columbia Code, 1951 Edition, in that she was adjudicated of unsound mind in mental health action No. 669-50 of the United States District Court for the District of Columbia and was thereafter committed to St. Elizabeth's Hospital and thereafter transferred out of the District of Columbia as a non-resident to the Spring Grove Hospital at Catonsville, Maryland, and as far as this respondent knows the petitioner is disqualified in that she is not responsible, having been convicted of drunkenness many times over the past ten years.

9. The respondent further avers that prior to the death of Cornelia Suikerbuik she had made many improvements on the real estate, making the same habitable for herself and the decedent, paying the taxes thereon, and the utilities and continuing the same after the death of the aforesaid Cornelia Suikerbuik and

is now repairing the aforesaid real estate under an order of condemnation of the Board for the Condemnation of Insanitary Buildings for the District of Columbia Government.

Having fully answered the petition of Lena Agnes Jones, this respondent prays:

1. That the prayers of the petition be denied.

2. That if the Court finds that an administratrix should be appointed that the respondent be permitted to qualify being the sole and largest creditor by giving a nominal undertaking.

3. That an order be entered granting all rights, title and interest of decedent's property, real and personal, to the respondent or in the alternative an order be entered directing payment to the respondent for services actually rendered as will reasonably compensate her from the proceeds of the estate.

4. That the Court grant such further and other relief as the nature of this cause may require.

/sd/ PATRICIA ELIZABETH FAHEY

PATRICIA ELIZABETH FAHEY
1441 Girard Street, N. E.
Washington, D. C.

DISTRICT OF COLUMBIA, ss:

Patricia Elizabeth Fahey, being first duly sworn, deposes and says that she has read the foregoing Answer by her subscribed and knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters she believes the same to be true.

/sd/ PATRICIA ELIZABETH FAHEY

Patricia Elizabeth Fahey

Subscribed and sworn to before me this 21st day of February, 1953.

/sd/ GEORGE E. FRAZIER
Notary Public

/sd/ HOWARD J. McGRATH

Howard J. McGrath
Attorney for Respondent
NAtional 8 3349
1101 Vermont Ave., N. W.
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of February, 1953, postage prepaid, mailed a copy of the foregoing Answer to Rex K. Nelson, Esq., 416 - 5th Street, N. W., Washington, D. C., Attorney for the Petitioner.

/sd/ HOWARD J. McGRATH
Howard J. McGrath
Attorney for Respondent

IN RE:

ESTATE OF
CORNELIA SUIKERBUIK,

Deceased.

Administration No. 82048

FILED
JUN 20 1956
Theodore Cogswell
Register of Wills, D.C.
Clerk of the Probate Court

CROSS-PETITION FOR LETTERS OF ADMINISTRATION

The Petitioner, Patricia E. Fahey, respectfully represents to the Court as follows:

1. That she is an adult, a resident of the District of Columbia, residing at 2508 22nd Street, Northeast, and is a citizen of the United States.

2. That on December 24, 1951, Cornelia Suikerbuik, a widow, died in said District at the age of 88 years. She was survived by no husband, child, or descendant of any child or children. Petitioner by diligent inquiry ascertained that the only known heirs at law or next of kin were the following who are resident in and citizens of Holland, residing at Laan, Van Eik en Duinen, 110, The Hague, Holland. Petitioner is informed and believes that these are all adults, and are the children of and sisters of the deceased:

Jan Boone, Janna Cornelia Van der Nass, Cornelius Boone, and Blasina de Looff.

3. That the above-named parties have been timely informed of the death of the decedent, and have been advised of their rights in the premises, but have taken no steps to secure the appointment of an administrator for the estate of decedent.

4. That for a long time prior to the death of said Cornelia Suikerbuik, Petitioner, at the instance and request of decedent, kept house, nursed, and cared for the well-being of decedent. That decedent left insufficient funds to compensate petitioner for her services; but promised petitioner that she would compensate her by leaving her the real estate more fully described below. That decedent, however, died without making such provision for petitioner nor made any will whatever. That there is due and owing petitioner, as reasonable compensation for her services aforesaid, the sum of, to-wit, $4,680.00 for which a claim in the prescribed form will be submitted for the examination of the Court.

5. That at the time of her death, decedent owned in fee simple, real estate in the District of Columbia, described as 1441 Girard Street, Northeast, being Lots 17 and 18, Square 4020, as recorded in the Plat Books in the Office of the Surveyor for said District; said real estate being improved by a frame residence. That for a time after said death, petitioner resided in the premises in order to protect the same from vandals; but being required to be absent therefrom in the daytime and in her absence windows were broken by stones, entry was forced into the premises and furniture, china, and other furnishings both of decedent and of petitioner were broken, mistreated and destroyed, so that petitioner was forced to withdraw from said premises in fear of bodily harm, but continued to visit there every day, and to cause the repair of the windows and doors, and to keep the property in usable condition. She has also paid all taxes assessed against the property in order to prevent it from being sold for taxes. The property being threatened with

condemnation by the District of Columbia on account of its condition as a result of the depredations of juvenile delinquents, petitioner expended, to-wit, more than $1,000 in the construction of a brick wall to bring it into compliance with the building regulations and in the repairs made necessary by vandalism.

6. Within recent weeks the house and premises have again been attacked by vandals, and the interior and exterior reduced to a shambles; every window, including the window frames, has been torn out, apparently by bricks and stones thrown through them, the doors pried open, and furniture, bedding, china, drawers pulled from desks, bureaus and closets, have been thrown and scattered about the yard which surrounds the premises; and the interior has been looted. The steps leading to the porch have been destroyed, and the District of Columbia now threatens to condemn the property, tear down and remove the house, and to charge the expense of this proceeding against the real estate.

7. Petitioner has no further funds to protect this property. If fenced in so as to prevent vandalism, the house could and should be repaired and restored to good condition. Petitioner is advised by competent architects that this could be done without undue expense; but she has been without legal status to take any steps toward this end. She seeks such legal status in this petition.

8. That the assessed value of said property is $5,275.00 and what is its fair market value, in its present condition, petitioner does not know.

9. That petitioner paid the funeral and other expenses incident to the last illness of decedent, part of which were met out of insurance. All other debts due, including taxes, petitioner paid, so that there are no debts owing from the estate, other than the debt due petitioner as aforesaid.

Wherefore petitioner prays:

(1) That letters of administration be granted to this petitioner;

(2) That the Court grant petitioner such other and further relief as the Court may deem just and proper.

/sd/ PATRICIA E. FAHEY
Patricia E. Fahey

/sd/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Petitioner

DISTRICT OF COLUMBIA, ss:

I solemnly swear that I have read the contents of the foregoing petition by me subscribed and know the contents hereof, and that the same is true to the best of my knowledge and belief.

/sd/ PATRICIA E. FAHEY
Patricia E. Fahey

Subscribed and sworn to before me this 13 day of June, 1956.

/SD/ ARTHUR P. SMITH
Deputy Register of Wills
for the District of Columbia
Clerk of the Probate Court

~~My Commission expires~~

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

PATRICIA E. PAHEY, Appellant, v. ROBERT E. MATTHE, et al., Appellees.	)	NO. 13,625

JOINT APPENDIX

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JOINT APPENDIX

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

PATRICIA E. FAHEY,
2508 - 22nd Street, N. E.
Washington, D. C.

Plaintiff

vs.

COLONEL ROBERT E. MATTHE,
107 Municipal Building,
14th and Pennsylvania Ave., N.W.
Washington, D. C.
and
COLONEL WM. H. CARY, JR.,
107 Municipal Building,
14th and Pennsylvania Ave., N.W.
Washington, D. C.
and
JOSEPH J. ILGENFRITZ,
Municipal Building
14th and Pennsylvania Ave., N.W.
Washington, D. C.

Defendants

2931-56

F I L E D

Jul 13 1956

Harry M. Hull, Clerk

C O M P L A I N T F O R I N J U N C T I O N

PENDENTE LITE AND PERMANENT

1. The Plaintiff, Patricia E. Fahey, is a citizen of the United States, a resident of the District of Columbia, and files this suit in her own right.

2. The defendants are sued personally and individually as members of the "Board for the Condemnation of Insanitary Buildings"

of the District of Columbia, under the pretended authority of an Act of Congress.

3. The Court has jurisdiction of this suit under its general equitable jurisdiction.

4. The plaintiff has a legal and equitable interest in Lots 17 and 18 in Square 4020 in the District of Columbia, improved by a residence known as Premises 1441 Girard Street, Northeast in said District. The record legal title to said lots and premises is in the name of Cornelia Suikerbuik, now deceased. There are no other assets in the estate of said decedent; and the real estate above described is by law subjected to the payment of the debts of said estate. The plaintiff is the only creditor of said estate as more fully set out below.

5. The said Cornelia Suikerbuik, a resident of the District of Columbia and a citizen of the United States, residing at the above-mentioned premises until the time of her death, departed this life on December 24, 1951, at the age of 88 years. Prior to her death she had been ill for a long period of time during which time the petitioner, at her request, had attended to her wants, nursed her, kept house for her, paid bills and taxes for her from time to time out of petitioner's funds; and was promised by said Cornelia Suikerbuik that she would be compensated for this by a testamentary devise of said real estate. Such devise was never made; and said estate is indebted to plaintiff in excess of, to-wit, $6,000.

6. The sole heirs at law and next of kin of said deceased are citizens and residents of Holland, and they have taken no steps whatever to administer her estate although fully informed concerning it, nor have they done anything to preserve or

protect the estate from the damage and vandalism by which ithas repeatedly suffered, as more fully set forth below. Because of their neglect and in order to preserve the estate and, as well, to protect her security for payment of her claim, plaintiff has filed in this Court a petition for appointment as administrator of the said estate which is now pending in the Probate Division of the Court.

7. That after the death of said Cornelia Suikerbuik, this plaintiff saw to her burial in accordance with her last wishes, and paid the funeral bills and other outstanding obligations of decedent's estate, and since that time has paid the real estate tax assessed against the property to save it from being sold for taxes. She also continued to occupy the residence upon the premises to protect it from vandals and juvenile delinquents who had been committing depredation upon other properties in the vicinity; and to keep it in repair. The petitioner says that the property was never in dilapidated nor unsanitary condition during the time she so occupied it, but was in a sound and livable condition until the happening of the unlawful and unauthorized actions of the defendants set forth below.

8. The Plaintiff was compelled, upon the instance of the defendants, to remove from the premises; since that time, although she has visited the property daily except when restrained therefrom by illness, that juvenile trespassers and delinquents, vandals, have continuously entered into and upon the property and committed damage and depredation thereon; that they have broken into the house by prying open the door and breaking through the windows, they have stolen and destroyed personal property therein belonging to the estate and to this plaintiff, and upon their recent visitations have completely wrecked the windows;

knocked the foundation pillars from under the porch; almost totally destroyed the stairway leading from the street to the eminence upon which the house sits; and scattered the house furnishings, linens, pictures, china, tableware, mattresses and articles of furniture, as well as many books and papers, through and around the house and upon the premises adjacent to it; all to the grievous damage of the estate and to the injury of plaintiff's legal right to look to said property for the payment of the estate's indebtedness to her.

9. And plaintiff says that although the vandalism described above was in violation of the criminal law as well as of the civil law, no effective action was ever taken by the Government of the District of Columbia to prevent the same, although the facts were well known to it and to its agents and employees. And plaintiff avers that the condition of the property at the present time is solely due to the said action of the said Government of the District of Columbia, its agents and employees, in wrongfully denying plaintiff the right to occupy the said premises so that she might prevent such depredation, and their negligence after so doing, in failing to protect the said property, as was their duty in the premises.

10. And petitioner says upon information and belief that now the said defendants, because of the condition of the premises for which they are primarily responsible, have undertaken to authorize by contract the total destruction and removal of the said residence from the premises, all of which cost will be charged against the real estate which is subject to the claim of this plaintiff, the result of which will be a forced sale of the property to satisfy the said cost, with consequent loss

to this plaintiff. This threatened action is without warrant or authority of law.

11. Plaintiff further says that during all the time aforesaid she had made and paid for continuous repairs to the said premises in an unsuccessful attempt to keep abreast of the damage and depredation. She caused the erection of a brick side wall to the house with steel and glass fenestra windows and has obtained the services of a licensed and competent architect who has prepared plans and blue prints for the repair and renovation of the aforesaid dwelling house; so that the value of the property may be enhanced and not depreciated and lost as it will be unless the defendants are restrained.

12. And plaintiff further says that she has not taken any steps to remedy the damage done during the past weeks as described in paragraph 8 above, having been requested and directed by the Police Department to leave the premises in its present condition for evidentiary purposes against the trespassers, some of whom have been identified. And it is while the property is in this status that the defendants propose to demolish it.

13. And plaintiff says that the action of the defendants is arbitrary, capricious and without authority of law; and is bureaucratic and unrealistic, and will result in irreparable damage to the estate of the deceased, Cornelia Suikerbuik, and irreparable damage to this plaintiff.

WHEREFORE, the premises considered, plaintiff prays:

(1) That the defendants be required to answer the exigencies of this complaint under oath;

(2) That the defendants and each of them be restrained pendente lite and permanently from the proceedings and actions

now in process and threatened, as we have set forth in the above complaint;

(3) And for such other and further relief as to the Court may appear necessary and just.

/sd/ PATRICIA E. FAHEY
Patricia E. Fahey

District of Columbia, SS:

I solemnly swear that I have read the foregoing Complaint subscribed by me, and know the contents thereof, and the same is true.

/sd/ PATRICIA E. FAHEY
Patricia E. Fahey

Sworn and subscribed to before me, a Notary Public this 13 day of July, 1956.

/sd/ MARY M. COLE

/sd/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Plaintiff
1804 M Street Northwest
Washington, D. C.

ANSWER OF DEFENDANTS

(F I L E D
(AUG 3 - 1956
(Harry M. Hull,
(Clerk.

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The Court lacks jurisdiction of the subject matter.

Third Defense

The plaintiff has failed to join indispensable parties and the action has not been brought in the name of the real parties in interest.

Fourth Defense

Plaintiff is guilty of laches.

Fifth Defense

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2. Defendants admit that they are members of the Board of Condemnation of Insanitary Buildings of the District of Columbia. The remaining allegations of paragraph 2 are denied.

3 and 13. Defendants deny the allegations contained in paragraphs numbered 3 and 13.

4. Defendants admit that the record title to said lot and premises is in the name of Cornelia Suikerbuik. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4.

5, 6, 11, and 12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs numbered 5, 6, 11, and 12.

7. Defendants deny the allegations in the last sentence of paragraph 7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 7.

8. Defendants admit that at their instance plaintiff was required to remove herself from the premises and say that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph numbered 8.

9. Defendants admit that any vandalism at the premises is a violation of the criminal law. Defendants deny the remaining allegations in paragrapn numbered 9.

10. Defendants admit that because of the condition of the premises they have undertaken to remove the residence on the premises and admit that the cost will be charged against the real estate. Defendants deny that the threatened action is without warrant or authority in law. Defendants are without knowledge or information sufficient to form a belief as to the trust of the remaining allegations.

Defendants deny each and every other allegation in the complaint not expressly admitted or otherwise answered.

/sd/ VERNON E. WEST
VERNON E. WEST C.H.G.
Corporation Counsel, D. C.

/sd/ MILTON D. KORMAN
MILTON D. KORMAN By H.B.P.
Assistant Corporation Counsel,
D.C.

/sd/ HUBERT B. PAIR

HUBERT B. PAIR
Assistant Corporation Counsel, D.C.

/sd/ J. HAMPTON BAUMGARTNER, JR.

J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

Certificate of Service

I hereby certify that the foregoing Answer was mailed, postage prepaid, to William A. Gallagher, Esq., attorney for plaintiff, 1804 M Street, N. W., Washington, D. C., this 2nd day of August, 1956.

/sd/ J. HAMPTON BAUMGARTNER, JR.

J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

(F I L E D
(
(A U G 29 2956
(
(HARRY M. HULL, Clerk

Defendants, members of the Board for the Condemnation of Insanitary Buildings, move the Court to dismiss the above entitled cause or, in the alternative, to grant summary judgment in their favor upon the following grounds:

1. The complaint fails to state a claim upon which relief can be granted for the following reasons:

a. There are indispensable parties who have not been joined in this action.

b. The action has not been brought in the name of the real parties in interest.

c. The plaintiff lacks capacity to sue, and

d. The Court lacks jurisdiction of the subject matter.

2. Consideration of the pleadings, together with the petitions for letters of administration filed in Administration No. 82048 in the Probate Division of this Court, and the affidavit of Richard L. Mattingly, which petitions and affidavit are incorporated herein and made a part hereof by reference, demonstrate that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law.

/sd/ VERNON E. WEST
VERNON E. WEST per M.D.K.
Corporation Counsel, D. C.

/sd/ MILTON D. KORMAN
MILTON D. KORMAN
Assistant Corporation Counsel, D.C.

/sd/ HUBERT B. PAIR

HUBERT B. PAIR
Assistant Corporation Counsel, D.C.

/sd/ J. HAMPTON BAUMGARTNER, JR.

J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

Attorneys for Defendants
District Building
Washington, D. C.

Certificate of Service

I hereby certify that a copy of the foregoing Motion to Dismiss Or, In the Alternative, For Summary Judgment, Memorandum of Points and Authorities in Support thereof, and Affidavit of Richard L. Mattingly were mailed, postage prepaid, to William A. Gallagher, attorney for plaintiff, 1804 M Street, N. W., Washington, D. C., this 29th day of August, 1956.

/sd/ J. HAMPTON BAUMGARTNER, JR.

J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

AFFIDAVIT OF RICHARD L. MATTINGLY

(F I L E D
(AUG 29 1956
(HARRY M. HULL, Clerk

DISTRICT OF COLUMBIA, ss:

Richard L. Mattingly being first duly sworn on oath deposes and says:

I am the executive secretary to the Board for Condemnation of Insanitary Buildings. As such, I have custody of the records and files of the Board and I am charged with the duty of carrying out the operation of the Board for the Condemnation of Insanitary Buildings and have personal knowledge of the facts hereinafter set forth.

In May, 1949, an inspection was made of premises 1441 Girard Street, N. E., after a complaint regarding the keeping of chickens without a permit and having refuse and garbage about the yard. This inspection disclosed that the building was in a very bad state of repair and in the opinion of the Board of Condemnation in such insanitary condition as to endanger the health and lives of the occupant and persons living in the vicinity. Consequently a notice to show cause why the building should not be condemned was served upon the owner. This notice was served on the owner Cornelia Suikerbuik on July 26, 1949. Miss Patricia Fahey was residing with Mrs. Suikerbuik. Many extensions were granted to the owner and due to her illness further action toward condemnation was held in abeyance. Mrs. Suikerbuik died on December 24, 1951.

Thereafter extensive search was made to determine who was the new owner of the property but no one could be found. There was no will. Miss Patricia Fahey continued to occupy the

premises. A new notice of proposed condemnation was published against the unknown heirs or assigns in the Washington Evening Star newspaper from December 5 through December 14, 1952, in accordance with Section 10 of the Act of 1906.

Thereafter the official notice of condemnation was published in the Evening Star from January 10 through 19, 1953. Miss Fahey, through an attorney, requested permission to occupy the building while repairs were undertaken. Certain extensions were granted her as she said she planned to have the building renovated. On numerous occasions Miss Fahey and her attorney were summoned for hearings in the Municipal Court Section of the Corporation Counsel's Office because the work was not progressing satisfactorily.

During the fall of 1953 and the spring of 1954 many inspections were made, and it was determined that the work was not progressing. No one could be found about the premises. However, the house still contained furniture and there were signs that someone was occupying the house occasionally.

Section 19(b) of the Act of August 28, 1954, granted those houses already under condemnation a six month reprieve from September 28, 1954. Subsequently, a warrant was served on Miss Fahey on April 18, 1955, charging her with illegal occupancy of the dwelling. This warrant was subsequently nolle prosse. A new warrant was issued for non-compliance with the condemnation order but this also was dropped. Subsequently, inspections in July, August, September, October, and November, 1955, showed that no work was in progress.

Thereafter the Board invoked the provisions of Section 5-622 to have the building demolished and the costs assessed by

the Commissioners as a tax against the premises. Notice was given through publication in the Evening Star on June 4, 5, and 6 that the personal property contained in the building after June 13, 1956, would be treated as abandoned and turned over to the Police Department. A notice to this effect was personally served upon Miss Fahey on June 1, 1956, by the Metropolitan Police Department. Bids for the demolition were solicited and the contract was awarded to the lower bidder, the A & A Wrecking Company, Inc., Hyattsville, Maryland, for $1,240.00 on June 26, 1956. The personal property was removed under the direction of the Board and given over to the custody of the Property Clerk of the Police Department on July 12, 1956, and the wrecking company was directed to commence operations. Before they began the plaintiff brought this injunctive action on July 13, 1956, and the contractor was advised to cease operations pending the outcome of the law suit.

All steps taken by the Board in this case were taken strictly in accordance with the laws applicable and upon the advice of counsel. The records disclose that plaintiff has never filed an application for appeal to the Condemnation Review Board as provided for in Section 13 of the Act of 1954, (Sec. 5-628, Supp. IV, D. C. Code 1951).

/sd/ RICHARD L. MATTINGLY
RICHARD L. MATTINGLY

Sworn to and subscribed before me the 29th day of August, 1956.

/sd/ ERNEST F. WILLIAMS
Notary Public, D. C.

My commission expires:
January 14, 1957

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION

(F I L E D
(SEP 18 1956
(HARRY M. HULL, Clerk

The Motion is without merit, for the following reasons:

1. The jurisdiction of the Court is well recognized; as well as the right to relief.

2. No necessary or indispensable parties are omitted.

3. The defense of Laches is without merit.

4. The suit is not filed under the terms of the Act of Congress relating to appeals in administrative proceedings; and in any event that act does not apply in cases seeking the relief asked in this cause.

/sd/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Plaintiff

MOTION FOR LEAVE TO AMEND COMPLAINT

(F I L E D
(SEP 21 1956
(HARRY M. HULL, Clerk

Comes now the Plaintiff, by her attorney, and moves the Court for leave to amend her complaint herein.

/s/ WM. A. GALLAGHER

WILLIAM A. GALLAGHER
Attorney for Plaintiff
RFD #2 Gaithersburg, Md. or
1804 H Street, N. W.
Washington, D. C.

MEMORANDUM OF AUTHORITY

Rule 15, Fed. Rules of Civ. Proc. Sec. a.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 21st day of September, 1956, served a copy of the above motion by leaving a copy thereof for the attention of J. Hampton Baumgartner, Jr., Esq., Assistant Corporation Counsel, Office of the Corporation Counsel, Municipal Building, 14th and Pennsylvania Avenue, N. W., Washington, D. C.

/s/ WM. A. GALLAGHER

WILLIAM A. GALLAGHER

ORDER

(F I L E D
(SEP 21 1956
(HARRY M. HULL, Clerk

This cause came on for hearing on defendants' motion to dismiss, or in the alternative, for summary judgment, and, upon consideration thereof, of the affidavit and memorandum in support of said motion and in opposition thereto, and, after oral argument by counsel for the respective parties, it is by the Court this 21st day of September, 1956,

ORDERED that defendants' motion to dismiss be, and the same is hereby, granted and that judgment be entered for the defendants.

/sd/ F. DICKINSON LETTS
JUDGE

Submitted by:

/sd/ J. HAMPTON BAUMGARTNER, JR.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D. C.

Certificate of Service

I hereby certify that a copy of the foregoing Order was mailed postage prepaid, to William A. Gallagher, Esq., Attorney for Plaintiff, R.F.D. 2, Gaithersburg, Maryland, this 20th day of September, 1956.

/sd/ J. HAMPTON BAUMGARTNER, JR.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

ORDER

FILED
OCT 15 1956
HARRY M. HULL, Clerk

Upon consideration of plaintiff's motion for leave to amend complaint and memorandum of authority in support thereof, it is by the Court this 15th day of October, 1956,

O R D E R E D that plaintiff's motion for leave to amend complaint be and the same is hereby denied.

/sd/ F. DICKINSON LETTS
F. DICKINSON LETTS, JUDGE

Submitted by:

/sd/ J. HAMPTON BAUMGARTNER, JR.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

Certificate of Service

I hereby certify that a copy of the foregoing Order was mailed, postage prepaid, to William A. Gallagher, Esq., Attorney for Plaintiff, R.F.D. 2, Gaithersburg, Maryland, this 12th day of October, 1956.

/sd J. HAMPTON BAUMGARTNER, JR.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

NOTICE OF APPEAL

(F I L E D
(OCT 22 1956
(HARRY M. HULL, Clerk

Notice is hereby given this 22d day of October, 1956, that Patricia E. Fahey, Plaintiff herein, hereby appeals to the United States Court of Appeals for the District of Columbia from the Orders of this Court entered on the 21st day of September, 1956 and on the 15th day of October, 1956, in favor of Defendants Matthe, et al., against said Patricia E. Fahey, Plaintiff.

/sd/ WM. A. GALLAGHER

WILLIAM A. GALLAGHER
Attorney for Plaintiff
1804 H Street, N. W.
Washington, D. C.
and
R.F.D. #2 Gaithersburg, Md.

Serve copy on

J. Hampton Baumgartner, Jr.
AssistantCorperation Counsel
Municipal Building
14th and Penna. Ave., N. W.
Washington, D. C.

ASSIGNMENT OF ERRORS

FILED
NOV 16 1956
HARRY M. HULL,
Clerk.

The Plaintiff (Appellant) asserts as her assignment of errors in this cause that the District Court erred in the following particulars:

1. In dismissing the complaint of the appellant.
2. In holding that appellant was without sufficient interest in the real estate involved in this cause to entitle her to relief.
3. In holding that the Act of Congress under which the appellees assumed to act was valid and constitutional.
4. In holding that appellants complaint did not assert a cause of action.
5. In holding that the appellant was not entitled to relief because of laches.
6. And for other error appearing upon the face of the record.

/s/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Appellant
1804 H Street, N. W.
Washington, D. C.

Certificate of Service

I certify that I have mailed a copy of the above assignment of errors to counsel for the appellees, the Corporation Counsel for the District of Columbia, addressed to his official office, this 16th day of November, 1956.

/s/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER

DESIGNATION OF RECORD ON APPEAL

(F I L E D
(NOV 16 1956
(HARRY M. HULL, Clerk

The Clerk of the District Court will please prepare the record on appeal herein, and include therein the following:

1. Complaint and summons,
2. Answer of defendants,
3. Motion to dismiss and affidavit of Richard L. Mattingly,
4. Opposition to motion to dismiss,
5. Motion for leave to amend complaint,
6. Order granting motion to dismiss,
7. Order denying leave to amend,
8. Notice of appeal,
9. Assignment of errors,
10. This designation of record.

/s/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Appellant
1804 H Street, N. W.
Washington, D. C.

I certify that I have mailed a copy of the above designation of record to counsel for the appellees, the Corporation Counsel for the District of Columbia, this 16th day of November, 1956.

/s/ WM. A. GALLAGHER
WILLIAM A. GALLAGHER
Attorney for Appellant

COUNTER-DESIGNATION OF RECORD ON APPEAL

FILED
NOV 21 1956
HARRY M. HULL, Clerk

The Clerk of the Court will please include, as additional parts of the record on appeal in the above-entitled cause, the following papers presently on file in the Probate Division of this Court in Administration Number 82048:

1. Petition of Lena Agnes Jones for letters of administration filed in February 1953.

2. Answer of Patricia E. Fahey topetition of Lena Agnes Jones for letters of administration filed February 1953.

3. Cross-petition of Patricia E. Fahey for letters of administration filed in June 1956.

Each of such papers having been incorporated by reference in the motion of the defendants to dismiss or, in the alternative, for summary judgment filed in the above-entitled cause.

/sd/ CHESTER H. GRAY
CHESTER H. GRAY By HBP
Corporation Counsel, D. C.

/sd/ MILTON D. KORMAN
MILTON D. KORMAN By HBP
Principal Assistant Corporation Counsel, D. C.

/sd/ HUBERT B. PAIR
HUBERT B. PAIR
Assistant Corporation Counsel, D.C.

/sd/ J. HAMPTON BAUMGARTNER By HBP
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D.C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re: Estate of)
Cornelia Suikerbuik) Administration No. 82048
Deceased)

(F I L E D
(FEB 3 - 1953
(Theodore Cogswell
(Register of Wills, D.C.
(Clerk of the Probate Court

PETITION FOR LETTERS OF ADMINISTRATION

The petition of Lena Agnes Jones respectfully represents to this Honorable Court:

1. That your petitioner is a citizen of the United States and a resident of the District of Columbia, and files this petition as the foster daughter and creditor of Cornelia Suikerbuik, the above-named decedent.

2. That the said Cornelis Suikerbuik, a native of Holland, became a citizen of the United States and a resident of the District of Columbia, and departed this life on the 24th day of December 1951, and that your petitioner has made diligent search and inquiry for a will insofar as possible and has neither found one nor obtained any information that there was one, and verily believes the decedent died intestate.

3. That prior to her death the decedent had received no word or communication from any relative in Holland for a period of some thirty (30) years, and your petitioner is informed and believes, and therefore avers, that no husband, child or decedent, brother or sister, father or mother, survived.

4. At the time of her death said decedent was seized of Lot 18, Square 4020, known as premises 1441 Girard Street, N. E., Washington, D. C., with improvements thereon, which property is assessed at $1,800.00 for land and $1,800.00 for improvements, and Lot 17, unimproved, assessed at $1,275.00, all paid for.

5. The said decedent was the possessor at the time of her death of personal property of a total estimated value of $500.00.

6. The said decedent, insofar as your petitioner is able to ascertain, after diligent search and inquiry, left no debts other than that for services rendered by petitioner, and there is now due and owing to W. W. Chambers Company the sum of $550.40 for expense of burial.

7. That your petitioner lived with and resided at decedent's home as her foster child since 1910, your petitioner then being the age of 13; that petitioner lived with and resided at decedent's home continuously until the year 1934, and from the latter year petitioner lived mainly separate and apart, but looked after and performed services for decedent to the date of her death; that in consideration of the care and aid and services, love and affection, of your petitioner, the decedent on many occasions promised to leave her property upon death to your petitioner; that during the years from 1918, when petitioner became 21 years of age, and 1950, petitioner looked after decedent, took care of the household for her, cleaning and cooking as necessary, and performing numerous other services, all of which petitioner would value at $1,000.00

each year for the total period of 32 years, or a total valuation of services rendered in the sum of $32,000.00.

WHEREFORE, the premises considered, petitioner prays:

1. That letters of administration be granted to this petitioner.

2. That petitioner be permitted to qualify as administratrix by giving an undertaking in the sum of $_____.

3. That order enter granting all right, title and interest of decedent's property, real and personal, to your petitioner, or, in the alternative, an order be entered directing payment to petitioner for services rendered as will reasonably compensate her from the proceeds of the estate.

4. That the Court grant the petitioner such other and further relief as to the Court may seem just and proper.

/sd/ LENA AGNES JONES

LENA AGNES JONES
508 G Street, N. W.
Washington, D. C.

DISTRICT OF COLUMBIA, ss:

Lena Agnes Jones, being first duly sworn, deposes and says that she has read the foregoing petition by her subscribed and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

/sd/ LENA AGNES JONES

LENA AGNES JONES

Subscribed and sworn to before me this 30 day of January 1953.

/sd/ LLOYD L. HARKINS

Notary Public, D.C.

/sd/ REX K. NELSON

REX K. NELSON
Attorney for Petitioner
416 - 5th Street, N. W.
Washington, D. C.

I personally guarantee the payment of costs amounting to $15.00.

/sd/ REX K. NELSON
Attorney

In re: Estate of)
)
CORNELIA SUIKERBUIK) Administration No. 82048
)
Deceased)

(F I L E D
(FEB 21 1953
(Theodore Cogswell
(Register of Wills, D.C.
(Clerk of the Probate Court

ANSWER OF PATRICIA ELIZABETH FAHEY TO PETITION OF LENA AGNES JONES FOR LETTERS OF ADMINISTRATION

The answer of Patricia Elizabeth Fahey respectfully shows to this Honorable Court:

1. The respondent admits that the petitioner is a citizen of the United States and denies all the remaining allegations of Paragraph 1 of the Petition.

2. The respondent admits that the said Cornelia Suikerbuik, a native of Holland, became a citizen of the United States and a resident of the District of Columbia and departed this life on the 24th day of December, 1951, in the District of Columbia. The respondent knows of no search or inquiry having been made by the petitioner concerning a will, but the respondent has made diligent search and inquiry and found no will and believes the decedent died intestate and can neither admit nor deny the remaining allegations of Paragraph 2 of the petition.

3. The respondent for answer to the allegations of Paragraph 3 of the petition states that the decedent had been in communication with her relatives in Holland within a few years prior to her death, and that although the decedent was not survived by a husband, child of decedent, father or mother, the decedent was survived by the following nephews who live in Holland, sons and daughters of her only sister, Blazina

BRIEF FOR APPELLEES

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 13,625

PATRICIA E. FAHEY,

Appellant,

v.

COLONEL ROBERT E. MATTHE,
COLONEL WILLIAM H. CARY, JR.,
JOSEPH J. ILGENFRITZ,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
For the
District of Columbia Circuit
FILED APR - 5 1957
Joseph W. Stewart
CLERK

CHESTER H. GRAY,
Corporation Counsel, D. C.
MILTON D. KORMAN,
Principal Assistant
Corporation Counsel, D. C.
HUBERT B. PAIR,
Assistant Corporation
Counsel, D. C.,
Attorneys for Appellees,
District Building,
Washington 4, D. C.

APPELLEES' STATEMENT OF QUESTION PRESENTED

The appellees, members of the Board for the Condemnation of Insanitary Buildings in the District of Columbia, made an order condemning as insanitary a building owned by a person, since deceased, who left surviving certain adult heirs at law and next of kin, citizens and residents of The Hague, Holland. The owner of the building failed during her lifetime to correct the conditions which led to its condemnation and, as provided by law, the appellees ordered the demolition and removal of the building and ordered further that the costs thereof be assessed as a tax against the premises upon which the building is located.

In the opinion of the appellees, the question presented is:

Was the appellant, who, with the decedent, was an occupant of the building at the time of its condemnation and who, after the death of the owner of the building, claimed to be a creditor of her estate, entitled to an injunction requiring the appellees, as members of the Board for the Condemnation of Insanitary Buildings, to vacate their order of condemnation and their further order that the building be demolished and removed and that the costs thereof be assessed against the premises upon which the building is located?

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UNITED STATES COURT OF APPEALS
For The District Of Columbia

No. 13,625

PATRICIA E. FAHEY,

Appellant,

v.

COLONEL ROBERT E. MATTHE,
COLONEL WILLIAM H. CARY, JR.,
JOSEPH J. ILGENFRITZ,

Appellees.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR APPELLEES

COUNTER STATEMENT OF THE CASE

The appellant, complaining as a creditor of the estate of Cornelia Suikerbuik, deceased, sought to enjoin the appellees, members of the Board for the Condemnation of Insanitary Buildings in the District of Columbia, from carrying out an order of condemnation directed at a certain building owned and occupied by the decedent during her lifetime (J.A. 1-6). On motion of the appellees (J.A. 1), the complaint was dismissed (J.A. 17) and appellant has appealed (J.A. 19).

There was no substantial dispute as to the facts. Appellees, as members of the Board for the Condemnation of Insanitary Buildings, condemned as insanitary a building owned and occupied by Cornelia Suikerbuik, who thereafter died intestate in the District of Columbia leaving as survivors certain adult heirs at law and next of kin who are citizens and residents of The Hague, Holland (J. A. 12, 32).

During her lifetime Cornelia Suikerbuik failed to correct the insanitary conditions which obtained in and about the building and after her death the appellees ordered that the building be demolished and ordered further that the costs incident thereto be assessed as a tax against the premises as provided in § 5-622, D. C. Code, 1951 Ed., Cum. Supp. V (J. A. 12, 13, 14).

Prior to and for sometime after the death of Cornelia Suikerbuik, appellant was an occupant of the premises. Appellant requested and obtained permission to continue her occupancy of the condemned premises upon her representation that she would correct the conditions which led to its condemnation.

Subsequent inspections disclosed that the insanitary conditions at the premises had not been corrected and appellant was required to remove herself from the dwelling. Appellees then, pursuant to authority vested in them by § 5-622, D. C. Code, 1951 Ed., Cum. Supp. V, published notice of their intention to have the building demolished and

the costs incident thereto assessed as a tax against the premises. A copy of the notice was served upon the appellant who then commenced the action below (J.A. 12-15).

In her complaint (J.A. 1-16), appellant alleged that she attended Cornelia Suikerbuik in her old age and after her death arranged for the funeral, paid the expenses thereof, and paid other outstanding obligations. Appellant alleged further that she paid taxes on the property, protected it from vandals, and maintained it. She then alleged that Cornelia Suikerbuik promised to devise the property to her but failed to do so and that the estate is indebted to her in the amount of $6,000. Appellant alleged also that the heirs at law and next of kin of Cornelia Suikerbuik are citizens and residents of Holland and that, although they were fully informed, they have taken no steps to obtain administration of the decedent's estate. Appellant alleged finally that the premises were never in a dilapidated or insanitary condition and that the action of the appellees in issuing the order of condemnation was arbitrary, capricious, bureaucratic, unrealistic and without authority of law (J.A. 2-5).

On February 3, 1953, one Lena Agnes Jones filed a petition for letters of administration on the estate of Cornelia Suikerbuik (Administration No. 82048) claiming as the foster daughter and creditor of the decedent. The petition alleged, among other things, that Lena Agnes Jones had served the decedent for over thirty years, that the decedent had

repeatedly promised to leave her the premises but failed to do so, and that the estate was indebted to her in the amount of $32,000 (J.A. 23-25).

Appellant opposed the petition of Lena Agnes Jones for letters of administration (J.A. 27-30) and thereafter filed a cross-petition for letters of administration (J.A. 32-35). Appellant, in her cross-petition for letters of administration, alleged that:

> "* * * Petitioner by diligent inquiry ascertained that the only known heirs at law or next of kin were the following who are resident in and citizens of Holland, residing at Laan, Van Eik en Duinen, 110, The Hague, Holland. Petitioner is informed and believes that these are all adults, and are the children of and sisters of the deceased: Jan Boone, Janna Cornelia Van der Nass, Cornelis Boone, and Blasina de Looff",

all of whom had been advised of Cornelia Suikerbuik's death and of their rights respecting her estate (J.A. 32). It does not appear from the record, however, that letters of administration on the estate of the decedent were ever issued to appellant.

Upon consideration of the foregoing the trial court granted the appellees' motion to dismiss (J.A. 17).

STATUTE INVOLVED

Act of Congress approved August 28, 1954, 68 Stat. 884, Ch. 1032, Sec. 2, §§ 5-617, 5-618, 5-621, 5-625, 5-628, 5-629, 5-633, 5-634, D. C. Code, 1951 Ed., Cum. Supp. V.

ORGANIZATION ORDERS INVOLVED

Order No. 102, 54-2034, G. F. 5-601 of the Board of Commissioners of the District of Columbia establishing the Board for the Condemnation of Insanitary Buildings, pursuant to Public Law 681, 83d Congress, Part I; notes to § 5-617, D. C. Code, 1951 Ed., Cum. Supp. V.

Order No. 103 of the Board of Commissioners of the District of Columbia establishing the Condemnation Review Board, pursuant to Public Law 681, 83d Congress, Parts I, II, III; notes to § 5-617, D. C. Code, 1951 Ed., Cum. Supp. V.

The pertinent text of the Statute and Orders involved are set forth in Appendix hereto.

SUMMARY OF THE ARGUMENT

Appellant was without standing to maintain any action for injunctive relief against the appellees as members of the Board for the Condemnation of Insanitary Buildings in the District of Columbia, because, at best, she was only a general creditor of the decedent Cornelia Suikerbuik.

But even if appellant had a definite and ascertained legal interest in the property which was the subject of condemnation she would not be entitled to an injunction against the appellees since she had not exhausted available administrative and judicial remedies.

In any event, since the action sought to be enjoined involved a judgment based upon an exercise of discretion by the appellees, in a matter properly within their jurisdiction, the judicial power will not be interposed to limit or control such action.

The statute which created the Board for the Condemnation of Insanitary Buildings in the District of Columbia was constitutional and was constitutionally applied in the condemnation of the property in which appellant claims an interest as a creditor.

ARGUMENT

I

Appellant has no standing to maintain the action below, because she had no definite and ascertained legal interest in the property which was condemned.

It is undisputed in the record that the legal title to the property which appellees condemned as insanitary was vested in Cornelia Suikerbuik during her lifetime and that at her death the legal title passed to her heirs who were citizens and residents of Holland (J.A. 2, 27, 28, 32), subject, however, to the satisfaction of the claims of creditors.

Appellant contends here, as she did below, that she is a creditor of the estate of Cornelia Suikerbuik and that, as such, she was entitled to an injunction against the appellees to prevent the execution of the order of condemnation. But there is no showing in the record that appellant's claim was ever reduced to judgment. Consequently, her status with respect to decedent's estate is, at best, that of a general creditor.

Generally, a creditor with a mere legal demand may not, in the absence of statutory authorization, invoke the aid of equity to collect his claim. Thus it has been held that in all cases where a court of equity interferes to aid the enforcement of a remedy at law, there must be an acknowledged debt, or one established by a judgment accompanied by a right to the appropriation of the property of the debtor for its payment. In other words, there must be, in addition to such acknowledged debt, an interest in the property or a lien thereon created by contract or by some legal proceedings. See Scott v. Neely, 140 U. S. 106, 35 L. Ed. 358; Blundon v. Guy, 60 App. D. C. 318, 320; Hess v. Horton, 2 App. D. C. 81. 86-87.

Inasmuch as the appellant had no such legal interest in the property which was the subject of condemnation, she could not have maintained a creditor's bill against Cornelia Suikerbuik during her lifetime. From this it follows that during the lifetime of Cornelia Suikerbuik appellant could not have had sufficient interest in such property to enjoin the

appellees from carrying out this order of condemnation.

Appellant having acquired no greater right respecting the property in question by reason of the death of Cornelia Suikerbuik, by no process of legitimate reasoning can it be concluded that she was entitled to the injunctive relief which was sought in the court below.

II

The appellant failed to exhaust available administrative and judicial remedies.

Appellant was fully informed of the conditions obtaining at the decedent's premises and she was also fully informed of the condemnation proceedings directed against the property and of the subsequent order of the appellees which was complained of below (J.A. 2-5, 12-14, 34). Nowhere in the record, however, does it appear that appellant, before commencing the proceedings below, exhausted the administrative and judicial remedies prescribed by §§ 5-628, and 5-629, D. C. Code, 1951 Ed., Cum. Supp. V. It is in those sections provided:

> " § 5-628. Review of order--Application to Condemnation Review Board--Fee.
>
> "Any owner of property affected by an order of condemnation issued under the authority contained in sections 5-616 to 5-634 shall be entitled to a review of such order by the Condemnation Review Board established by the Commissioners in accordance with the provisions of section 5-617, upon making application to said Condemnation Review Board, in writing, within fifteen days from the date on which such owner has been served notice of such order of condemnation, and upon

payment of a fee of $25. The said Condemnation Review Board shall be authorized by the Commissioners to affirm, modify, or vacate any order of condemnation issued under the authority contained in sections 5-616 to 5-634. * * * [Emphasis supplied]

> " § 5-629. Appeal from order--Municipal Court for the District of Columbia--Modification or vacation by court.
>
> "The owner of any building or part of building condemned under the provisions of sections 5-616 to 5-634 may, within fifteen days from the date on which such owner receives notice that such order of condemnation has been reviewed by the Condemnation Review Board established in accordance with section 5-617 and has been affirmed or modified by such Board, appeal to the Municipal Court for the District of Columbia for the modification or vacation of said order of condemnation. The municipal court shall give precedence to any such case, shall hear the testimony adduced therein, shall view the building or part of building affected by said order of condemnation, and thereafter shall affirm, modify, or vacate said order. In any proceeding instituted in accordance with the provisions of this subsection, such proceeding shall be conducted by the judge only, and nothing herein contained shall be construed as authorizing or entitling the owner of property affected by such order of condemnation to a trial by jury. * * *"

It is so well established as to hardly require the citation of authority that available administrative remedies must be exhausted before judicial review can properly be accorded one complaining of the action of an administrative tribunal. Federal Power Commission v. Metropolitan Edison Company, 304 U. S. 375, 82 L. Ed. 1408; Utah Fuel Co. v. National Bituminous Coal Commission, 69 App. D. C. 333, 335, 101 F. 2d 426, 428, aff. 306 U. S. 56; Black River Valley

Broadcasts, Inc. v. McNinch, et al., 69 App. D. C. 311, 101 F. 2d 235, 238.

Here the Congress has provided an exclusive remedy to test the appellees' action and such remedy was plain, adequate and complete. Under the circumstances, even if the appellant had a definite and ascertained interest in the property, she would not have been entitled to injunctive relief.

III

Appellant was not entitled to injunctive relief against the appellees, because her right in respect to the property was not clear and free from doubt.

As a general rule the judicial power will not be interposed either by mandamus or injunction to limit or direct the action of public officers and agencies in matters committed by law to their jurisdiction and control. Thus in Proctor & Gamble Co. v. Coe, 68 App. D. C. 246, 249, 96 F. 2d 518, 521, this Court said:

> "It is only in clear cases of illegality of action, therefore, that the courts will intervene (Bates & Guild Co. v. Payne, 194 U. S. 106, 109, 24 S. Ct. 595, 48 L. Ed. 894; National Life Ins. Co. v. National Life Ins. Co. [209 U. S. 317, 325, 28 S. Ct. 541, 52 L. Ed. 808], supra; Masses Pub. Co. v. Patten, 2 Cir., 245 F. 102, 106) to displace the judgments of administrative officers or bodies (Waite v. Macy, [346 U. S. 606, 608, 38 S. Ct. 395, 62 L. Ed. 892], supra). 'The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they

> properly discharged their official duties.' United States v. Chemical Foundation, 272 U. S. 1, 14, 15, 47 S. Ct. 1, 6, 71 L. Ed. 131. The presumption of validity attends legislative and other official action, and the burden of proof to the contrary is upon one who challenges the action."

Here there is no showing of illegal, capricious or arbitrary action on the part of the appellees. On the contrary, there is a clear demonstration of proper administrative action within the framework of existing law (J.A. 12-15). Since the action sought to be enjoined involved a judgment flowing from the exercise by appellees of discretion in a matter properly within their jurisdiction, the court below did not err in dismissing the complaint.

IV

> The Act of Congress providing for the condemnation of insanitary buildings in the District of Columbia is not unconstitutional and was not unconstitutionally applied to any property of the appellant.

The substance of appellant's final contention is that the statute[1] under which appellees proceeded in condemning the property of Cornelia Suikerbuik is unconstitutional in that it prescribes standards which are

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[1] Act of August 28, 1954, 68 Stat. 884, ch, 1032, §§ 5-616 through 5-634, D. C. Code, 1951 Ed., Cum. Supp. V.

so indefinite and vague as to fall short of the requirements of due process.

But nowhere in the record does it appear that any such point was raised in the court below. Under similar circumstances, this Court, in Keyes v. Madsen, 86 U. S. App. D. C. 24, 179 F. 2d 40, 42, said with respect to the statute regarding condemnation of insanitary buildings as it read prior to its amendment by the Act of August 28, 1954, supra:

> "Instead of contending before us that the statute was being unconstitutionally applied to her property, as she had alleged in the complaint, the appellant took a different tack by arguing, for the first time, that the statute is unconstitutional on its face because Congress, in delegating to the Board the power to condemn buildings so insanitary as to endanger the lives of their occupants or of persons living in the vicinity, did not establish standards for the guidance of the Board. Having failed to present this plea to the District Court, the appellant cannot urge it here. The general rule is that such a question, if not raised in the trial court, will not be considered on appeal. Wabash Ry. Co. v. City of St. Louis, 8 Cir., 1933, 64 F. 2d 921, 929, certiorari denied 1933, 290 U. S. 668, 54 S. Ct. 88, 78 L. Ed. 577; Southwestern Oil Co. v. State of Texas, 1910, 217 U. S. 114, 30 S. Ct. 496, 54 L. Ed. 688; Chesapeake v. Ohio Ry. Co. v. McDonald, 1909, 214 U. S. 191, 29 S. Ct. 546, 53 L. Ed. 963.
>
> "Moreover, if the plea were available it could not be sustained. We regard the statute which created the Board for the Condemnation of Insanitary Buildings and defined its jurisdiction and authority as being sufficiently definite and certain to guide the Board and to inform property owners of conditions which would lead to condemnation. The act does not violate the Fifth Amendment."
> [Emphasis supplied]

Appellant has directed the Court's attention to nothing in the statute, as amended, which compels any holding respecting its constitutionality different from that in Keyes v. Madsen, 86 U. S. App. D. C. 24, 179 F. 2d 40, 42, supra. It is, therefore, too clear for further discussion that appellant's final contention is wholly without merit.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the trial court did not err when it dismissed the complaint and entered judgment for the appellees.

Respectfully submitted,

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APPENDIX

STATUTE INVOLVED

The Act of Congress approved August 28, 1954, 68 Stat. 884, Ch. 1032, Sec. 2, § 5-617 (a), D. C. Code, 1951 Ed., Cum. Supp. V, which, in addition to the parts of such Act quoted by appellant, provides:

> " § 5-618. Condemnation procedure--Notice--Order--Remedial action by owner--Occupancy of condemned buildings.
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> " * * * From and after fifteen days, exclusive of Sundays or legal holidays, or within such additional time as may be fixed by the Board, after a copy of any order of condemnation has been affixed to any condemned building or part of building, no person shall occupy such building or part of building. * * * [Emphasis supplied]
>
> " § 5-621. Cancellation of condemnation order--Extensions of time.
>
> "If the owner of any building or part of building condemned under the provisions of sections 5-616 to 5-634 shall make such changes or repairs as will remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the conditions which led to the condemnation of such building or part of building, the order of condemnation shall be canceled and the building may again be occupied. If the owner cannot make such changes or repairs within the period within which the owner may lawfully permit such building or part of building to be occupied under section 5-619, but proceeds with such changes or repairs with reasonable diligence during such period, said Board may, by special order, extend from time to time the period within which the occupants of said building or part of building may remain therein, and within which the owner of such building may permit the said occupants so to remain. * * *
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> " § 5-625. Notice--Service.
>
> "Any notice required by sections 5-616 to 5-634 to be served shall be deemed to have been served if delivered to the person to be notified, or if left at the

usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein; or if no such residence or place of business can be found in the District of Columbia by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or if no such office can be found in said District by reasonable search, if forwarded by registered mail to the last known address of the person to be notified and not returned by the post office authorities; or if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post office authorities; if published on three consecutive days in a daily newspaper published in the District of Columbia; or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. * * *

" § 5-628. Review of order--Application to Condemnation Review Board--Fee.

"Any owner of property affected by an order of condemnation issued under the authority contained in sections 5-616 to 5-634 shall be entitled to a review of such order by the Condemnation Review Board established by the Commissioners in accordance with the provisions of section 5-617, upon making application to said Condemnation Review Board, in writing, within fifteen days from the date on which such owner has been served notice of such order of condemnation, and upon payment of a fee of $25. The said Condemnation Review Board shall be authorized by the Commissioners to affirm, modify, or vacate any order of condemnation issued under the authority contained in sections 5-616 to 5-634. * * * [Emphasis supplied]

"§ 5-629. Appeal from order--Municipal Court for the District of Columbia--Modification or vacation by court.

"The owner of any building or part of building condemned under the provisions of section 5-616 to 5-634 may, within fifteen days from the date on which such owner receives notice that such order of condemnation has been reviewed by the Condemnation Review Board established in accordance with section 5-617 and has been affirmed or modified by such Board, appeal to the Municipal Court for the District of Columbia for the modification or vacation of said order of condemnation. The municipal court shall give precedence to any such case, shall hear the testimony adduced therein, shall view the building or part of building affected by said order of condemnation, and thereafter shall affirm, modify, or vacate said order. In any proceeding instituted in accordance with the provisions of this subsection, such proceeding shall be conducted by the judge only, and nothing herein contained shall be construed as authorizing or entitling the owner of property affected by such order of condemnation to a trial by jury. * * *

"§5-633. Definitions--'Commissioners'--'Owner'.

"(a) For the purposes of sections 5-616 to 5-634, the term 'Commissioners' shall mean the Commissioners of the District of Columbia or their designated agent or agents; and the term 'owner' shall mean (1) any person, or any one of a number of persons, in whom is vested all or any part of the beneficial ownership, dominion, or title of the property found by the Commissioners to be in an insanitary condition; (2) the committee, conservator, or legal guardian of an owner who is non compos mentis, a minor child, or otherwise under a disability; or (3) a trustee elected or appointed, or required by law, to execute a trust, other than a trustee under a deed of trust to secure the repayment of a loan.

"(b) Wherever under sections 5-616 to 5-634 any act is to be performed by, or any notice is to be given, an owner, such act may be performed by an agent of such owner, or such notice may be given to an agent of such owner who collects rent or otherwise acts as an agent for the owner in connection with said property. * * *

"§ 5-634. Suits and proceedings under prior law--Time limits.

"* * * (c) Wherever any provision of sections 5-616 to 5-634 refers to any order of the Board for the Condemnation of Insanitary Buildings, such provision shall mean the order of such Board, or, if such order be reviewed by the Condemnation Review Board, as such order has been affirmed or modified by the latter Board; and wherever sections 5-616 to 5-634 establishes any time limit within which there shall be compliance with an order of the Board for the Condemnation of Insanitary Buildings, such time limit shall begin running from the date on which the owner of the property affected by said order is served with notice thereof, or, if such order be reviewed by the Condemnation Review Board, from the date on which the owner of such property receives notice that such order has been affirmed or modified by the latter Board. * * * "

ORGANIZATION ORDERS INVOLVED

Order establishing Board for the Condemnation of Insanitary Buildings, Organization Order No. 102, 54-2034, G. F. 5-601 of the Board of Commissioners of the District of Columbia(Notes to § 5-617, D. C. Code, 1951 Ed., Cum. Supp. V):

"Pursuant to the authority contained in Public Law 681, 83d Congress, it is hereby ordered:

"Part I

"Board for the Condemnation of Insanitary Buildings--

"a. In accordance with section 2 (a) (1) of Public Law 681, 83d Congress, there is hereby established a Board for the Condemnation of Insanitary Buildings.

"b. The Board for the Condemnation of Insanitary Buildings shall consist of three members who shall serve at the pleasure of the Board of Commissioners or until their successors are appointed: an Assistant to the Engineer Commissioner, who shall serve as Chairman; a representative of the Department of Public Health; and a representative of the Department of Licenses and Inspections."

* * * * * *

Order establishing Condemnation Review Board, Organization Order No. 103 of the Board of Commissioners of the District of Columbia (Notes to § 5-617, D. C. Code, 1951 Ed., Cum. Supp. V):

"Pursuant to the authority contained in Public Law 681, 83d Congress, it is hereby ordered:

"Part I

"Condemnation Review Board--

"a. In accordance with section 2 (a) (2) of Public Law 681, 83d Congress, there is hereby established a Condemnation Review Board.

"b. The Condemnation Review Board shall consist of three members and an alternate member for each of said members, at least two of such members and at least two of such alternate members to be residents of the District of Columbia who own real property in the District of Columbia and are not employed by the District of Columbia or the Government of the United States.

* * * * * *

"Part II

"Purpose--

"The Condemnation Review Board, upon written request by an owner of property affected by any order of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and upon the payment of the prescribed fee, shall review such order, shall view the property so affected, shall make findings of fact relating to the insanitary condition or conditions found to exist in or about such property, and, to the extent that the condition of the property under examination requires the affirmation, modification, or vacation of such order of condemnation, affirm, modify, or vacate such order. The Condemnation Review Board shall establish procedures for its review of orders of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and shall prepare and publish rules relating to such procedures. All actions taken by the Condemnation Review Board shall be in accordance with the provisions of Public Law 681, 83d Congress.

"Part III

"Powers, authorities, and jurisdiction--

"All powers, authorities, and jurisdiction authorized by Public Law 681, 83d Congress, to be exercised by the Condemnation Review Board are hereby assigned to such Board."